The public hearing of the above entities was taken at the Sheraton New Orleans Hotel, Napoleon Ballroom, Third Floor, C-1, 500 Canal Street, New Orleans, Louisiana, beginning at 9:35 a.m. on February 3, 2012.

Before Mark LaCour, Certified Stenomask Reporter, in and for the State of Louisiana.
MS. FREDERICK:

Good morning, and thank you all for being here. I’m Paula Frederick. I am the chair for the Standing Committee on Ethics and Professional Responsibility. I’d like to introduce the other folks at this end of the podium and then I’m going to introduce my Myles Link who will introduce the members of his committee. To my immediate right is Justice Norman Veasey who is a member of the Standing Committee on Ethics and Professional Responsibility. To his right is Robert Mundheim who is the -- I guess I could call him chair emeritus of the Standing Committee on Ethics. Next to him is Judge Annette Scieszinski who is the chair of the judicial division committee on ethics and responsibility. Then next to her is Peter Bennett who chairs the Standing Committee on Judicial Independence. To my immediate left
is Myles Link, the chair of the Standing Committee on Professional Discipline and he will introduce the members of his committee who are participating in the hearing today.

MR. LINK:

Thank you very much, Paula. As you know the Standing Committee on Professional Discipline was charged by (inaudible). I’m sorry. Thank you very much, Paula. As you know the Standing Committee on Professional Discipline was charged by the house of delegates in Resolution 107 passed at the August 2011 annual meeting to work with the Standing Committee on Ethics and Professional Responsibility to develop amendments to the model rules of judicial conduct and the model rules of professional conduct as appropriate to implement the judicial disqualification proposal that was adopted by the house. We have appointed a subcommittee of the
Standing Committee of Professional Discipline to work closely with the Standing Committee of ethics on this. I’d like to introduce the other two members of our subcommittee. To my far left is Alice Mine. Alice is the chief ethics counsel of the North Carolina State Bar. To my immediate left is Cleveland Miller, an attorney in private practice, the past president of the Maryland State Bar and a past chair of the ABA Standing Committee on Bar Services. Thank you.

Ms. Frederick:

Let me just give you a couple of housekeeping details about how we’d like to proceed today. We do have a schedule and those of you who have been allotted a particular time to speak hopefully we will be able to stick right to the schedule. But when it is your turn to speak we would ask that you come forward and use the table here and the microphone.
setup directly in front of us. We would also for the -- the testimony is being recorded and there will be a transcript that will be available on the ABA’s website. So if you would please identify yourself before you begin your remarks. If you have a business card I’m sure the court reporter will find that helpful for purposes of getting the spelling of your name right. We hope that we’ve got time for questions and comments from those of you in the audience who have not pre-registered for that. So towards the end we will have open mic time for anyone who would like to make comments and once again we’d ask that you come up front and use the microphone up at the front to do that. If we do run out of time you may still comment on the draft proposals by -- in writing by submitting those comments to us either through staff at the ABA or to anyone of the members of either of
the committees, ethics of professional responsibility. There is no deadline for submitting comments. The draft that we are presented that we are working from today is very much a working draft. And we expect that we will be discussing it and revising it in the coming weeks and months. So please, if you’ve got comments and we don’t get to you today please don’t forget to submit them so that we can consider your thoughts as we work on refining this document. I think that’s all of the housekeeping details.

With that I’d like to turn it over to Bob Mundheim who is going to give you a brief description of the revisions that we’ve made.

MR. MUNDHEIM:

Thank you, Paula. The proposals that you have before you follows the house of delegates actions in urging states in which judges are subject to
election. And it’s just those to adopt disclosure requirements for lawyer and litigants who have provided and in support in an election involving a judge before whom they are hearing, and also to provide guidelines for judges with respect to their qualification obligations. The major thrust of the proposals that are before you is not to shield the judge of information about who has supported or contributed to their campaign in an amount that is substantially important to the most recent campaign of the judge, but rather to have the judge know those facts and weigh them as they make a judgment about whether or not they’re able to act impartially in the matter before them. That theme is reflected in the rebuttable presumption in 2.114 that the judge knows the amount source and value of direct and indirect contributions to the extent that they
are matters of public record and reasonably available. That presumption is buttressed by an obligation of law firms to institute procedures to learn what contributions or support the firm, all the lawyers in the firm and employees in the firm have made to the election of a judge. That section is very broadly written. It gives great leeway to the managers of the law firm to set out the procedures to develop the information but at the same time will protect the identity of individuals who made contributions both from knowledge within the firm, because they’re only looking for aggregate numbers to be reported publically. The proposal also sets forth a variety of factors for the judge to consider in determining whether or not she will act or appear to act impartially. Those are set out in section comments five rule 11-211. I mean that pretty
much sums up what’s in the proposal.

**MS. FREDERICK:**

We’re going to turn to Justice Veasey now to talk about a discussion that the conference of chief justices has had about the draft.

**MR. VEASEY:**

Can everybody hear me? I’m Norm Veasey and I’m a practicing lawyer now but I was chief justice of the Delaware Supreme Court and I’m also a member of the conference of chief justices because I was honored to be the president of the conference. So I’m a holdover member of the conference. The conference just met in Wilmington, Delaware. We had a very successful meeting. I attended a committee of the conference, a committee on which I serve called the committee on professionalism and competence of the bar. It had a long agenda that day and unfortunately the judges or justices from states that have robust contested elections were
not there. So we decided at that
meeting that we wanted to get the
input of those chief justices and
through them the input of the judges
under them. I’m going to communicate
back to that committee when this
conference is -- well, when this
hearing is over and try to set up
some kind of a procedure, because we
very much want to get your input
today or later as Paula said and
we’re going to get everybody’s input
because this is tough duty. The very
fine committee on judicial
independence headed by Will
Weisenberg and Alan Dimond are
participating and headed part of that
came up with a wonderful proposal for
procedures in those states where
judges are elected. Procedures for
disqualification and review of
denials of this disqualification.
And their frame board was the
problems created by cases like
Citizen’s United and Caperton where
disqualification is a problem. And you all know about the Supreme Court’s decision in Caperton for example. The resolution presented by the committee on -- or the commission on judicial independence was approved by the house of delegates. The conference of chief justices recommended that approval and approved the Standing Committee’s recommendation. The Standing Committee’s recommendation also included some fundamental principles that were set forth by the conference of chief justices and they involved questions such as whether you should have the opponent’s information available because sometimes not only might the judge be perceived as offering a gratitude to the lawyer who contributed or a party who contributed substantially to that judge but also any debt of hostility for example to someone who contributed to the judge’s opponent.
in such -- in such a manner. That’s tough to draft and you’ll see it’s not drafted in what we have before you. Now, we have received some comments that we discussed at this meeting of the conference of chief justices on such new turns as other support, substantially important rebuttable presumption and the like. These are new terms. Whenever a rule or proposal is out there and many milieu new terms attract attention and new terms are something that have to be fleshed out. And that’s the reason why we do have a deliberative processing in considering these proposals. The house of delegates resolution 107 that approves the Standing Committee proposal calls upon our committee and the discipline committee to proceed on an expedited basis to offer what judicial amendments and disciplinary amendments, if any, are called for. So we have no deadline to do that.
We did have a target date of trying to get something to the house of delegates by August. I don’t know whether that’s feasible or not. Members of the conference of chief justices with whom I interacted at that recent meeting were doubtful that that timetable would work because it was necessary to get as much information as you could from the justices and chief justices and the judges in those states that had contestable actions. So Paula said that we really want to hear from you all today and later and we’re in a listening mode today.

**MS. FREDERICK:**

All right, we’re moving ahead of scheduled, I’m delighted to say, but I think we’re ready to proceed with our first speaker. Judge Scieszinski?

**MS. SCIESZINSKI:**

Thank you, Paula, and thank you to the joint committees for allowing...
me to participate here at the podium today. That came as a bit of a
surprise because I wasn’t expecting to be a speaker and expecting to
testify in front of the witness stand, which is a new experience.
But I understand it’s okay I’m sure for me to stay here?

**MS. FREDERICK:**

Please stay there. I would imagine that the people in the back are having some trouble hearing you. So --

**MS. SCIESZINSKI:**

I’ll pull the microphone a little bit closer. Good morning to everyone. I’m Annette Scieszinski. I chair the judicial divisions committee on ethic and professional responsibility. And as you know our committee stands as a resource to the judicial division to look at issues of ethics and bring a judge’s perspective to that. We have vetted these proposals and are
pleased to know that they’re working drafts and that there will be further opportunities to do that. We have voted as a committee on them and hence the judicial counsel obviously hasn’t had any recommendation from us and they haven’t taken any formal action. But we do offer a studies feedback and that is offered with the hope that it can serve a constructive purpose. Our 22 member ethic committee is comprised of judges and lawyers from all over the conferences of judicial division and thus they represent a broad perspective and real life experience out there in the field. Before I get to the feedback we received so far and that I would like to pass on today I would initially just say thank you. Thank you to the committee for fair and timely and transparent process that we’re participating in. Kudos to the joint committee for it’s really clear that there’s been some careful
thought put into the crafting of these proposals and they acknowledge modern factors that judges and lawyers and the public all wrestle with out there in the field. They also take care to balance public interest with the logistics and the realities of current world judicial administrations. So we’re just very pleased that the obvious work goes into all of this. The proposals have largely generated positive response from the judges who participate with the JD ethics committee. You know, judges really welcome guidance in this area as in all areas of ethics. And I firmly maintain that 99.999 percent of the judges in America want to do the right thing and strive everyday to do the right thing. But because of all the nuances of the issues that we confront and that we confront spontaneously guidance such as our model code and guidance such as that type that we see in this
working draft proposal is very, very important and it’s welcomed. I must remark as to the thoughtful commentary included in the proposals. I want to specifically give a shout out to the positive impact that I think that commentary presents for teaching judges about the powerful role of non-financial support in an election context and also teaching judges about the care plus the exercise in evaluating the totality of circumstances presented in any given fact pattern.

Three points of suggestions that I would offer today on behalf of the JD ethics committee. First of all, a very easy one, we’re thinking that we need to add a word in the new language that’s contained in Rule 2.11 disqualification in subsection A, subsection four of that where there is a reference to campaign, just for consistency with how campaign is acknowledged in other
places in the model code. We think that word should be preceded by the word election. The second point of suggestion -- and really this is a question, the effect that one of the alternatives posed for the new model rule of professional conduct would be numeral 5.1A. And in that rule it reads when a lawyer appears in front of the judge the lawyer shall inform the judge. We think it might be more practical to require disclosure of the aggregate campaign contributions at the lawyer’s first appearance in the case which would be a pleading appearance, and that that notification and disclosure ought to be accomplished by pleading. The thought being that it would create a more permanent record. It would be more readily accessible not only by the parties involved in the case but by any media involved watching the case like the public watching the case, and it would stand as a more
user friendly and effective disclosure. It also would avoid the need for attorneys carrying the burden to repeatedly make disclosures. The issue is illustrated by a great example that one of our committee members, Ray McCoskey, set forth as a hypothetical. You know, if you think about a judge that might be working a small claims docket and might have say 80 cases of a court call list and a contributor, maybe a prominent bank is involved in a number of those cases and each time one of those cases is called up the attorney makes a disclosure about an aggregate contribution that is made, and some of that happening over and over and over again distorts in a way the importance of that contribution history. There’s nothing wrong with doing it but it may lead the public to believe that there’s something more going on there than there really
is and it would be a consumption of
time obviously that would impair a
judicial economy and the same thing
would be accomplished by a pleading
disclosure in each one of those files
that would immediately alert all of
the folks that are participating and
anyone else watching that file in
particular. So that would be a
suggestion we would offer. One other
thing about that, there was a concern
that the alternative, the second
alternative and the proposed rule
5.1A is a bit inconsistent with the
second alternative in the proposed
Supreme Court rule. So we would just
ask the committee just to take a look
at that. And then a final point of
mention today on this working draft
is there’s new language proposed for
rule 2.11 subsection A, subsection
four, rebuttal presumption that has
been mentioned. While the rebuttal
presumption is a useful tool in a
hearing on a motion to disqualify for
example it may not be the best mechanism for the most user friendly mechanism for a judge who’s in chambers working through routine files and evaluating the presence of campaign contributors may be appearing in those files. So we would just mention that conundrum and the draft continues to work through the process maybe we can come up with something there. We would offer to continue to take on this in any specific proposal that we would have on that we would get to you in writing. So that concludes the remarks that I had prepared for today and I would be pleased to take any questions if that’s a good time for questions. Otherwise, I just appreciate the opportunity for our committee and the judges emeritus essentially be involved in this process.

MR. MUNDHEIM:

You suggested that the
Disclosure be made when the pleading was filed. Now, at that point would you know who the judge is?

**MS. SCIE SZINSKI:**

That’s an excellent question and in some jurisdictions you would because the assignments are made from the cases files. In some jurisdictions there’s a certain judge that’s handling that docket. In some jurisdictions like mine you would not.

**MR. MUN DHEIM:**

I think we could use some help in trying -- I think we both would say at the earliest possible moment and maybe you could give us some help on articulating that.

**MS. SCIE SZINSKI:**

Yes, we would be pleased to continue to think on that and to work up some language and propose it to you in writing.

**MS. FREDERICK:**

Thank you, Judge Scieszinski. I
think that Mr. Link would like to
make a comment.

**MR. LINK:**

I’d like to ask Judge Scieszinski a question. Judge, in
the proposed amendment, the 2.114, 2.11A4, the specific amount of the
collection that’s been taken out
and replaced with the phrase
substantially important and the
specific time period has been taken
out and replaced with the phrase most
recent campaign, what is your
committee’s views of those changes?

**MS. SCIeszinski:**

Excellent questions, both. Our
commitee did not receive any
specific feedback about those two
issues and I will offer personal
feedback from my nearly 16 years of
experience on the bench and having
studied and worked in the field of
ethnic issues quite a bit. I think
the removal of a specific dollar
amount is a good idea because the
important factor on changes in a case depending on the circumstances, jurisdiction, etcetera, etcetera, etcetera and although that doesn’t give specific guidance a hardline example to judges or lawyers as is what is too much or what is not enough it does allow for a due process analysis that would be germane to the case it involved. I represent an evolution of thought on that because when our Supreme Court considered the model code I was one of the people who very much pushed for a certain dollar limit to be set. I think the arguments that won me over that it’s better not to set a certain dollar limit is the arguments that if there’s a hard line number that will automatically disqualify a judge it’s easy for folks to automatically disqualify a judge. And so there was concern that that would allow orchestration of the tribunal or form shopping, another
term for that, and frustrate judicial administration unfairly. With regard to the most recent campaign I think we’ve got an issue there and I would personally be in favor of loosening that language up to allow a more copality of the circumstance analysis there. Obviously if the most recent campaign was five years ago it’s a great term and it works out very well. If the most recent campaign was six months ago that’s a whole different picture. So I know this been a lot of comment about that.

**MS. FREDERICK:**

Judge Veasey?

**MR. VEASEY:**

Thank you. Thank you very much. I think it’s obvious that every state can decide its own judicial code provision and its own model rules of professional conduct. It is interesting to know that what is stated here in resolution -- in the report that accompanied resolution
107 that A4 was proposed and it was adopted, but states have not followed it. And In A4 it left a -- in the model rule, left a blank for the dollar amount. Some states have put in a dollar amount, not necessarily in the same language as the model rule. But New York for example has a specific dollar amount. I think maybe the thinking there is if it’s a bright line and clear substantially important to the judge’s campaign is not a bright line and it depends on the circumstances. So I just wanted to point that out. This is at page 13 of the report accompanying resolution 107.

MS. FREDERICK:

Are there any questions for Judge Scieszinski. If not, we’ll move on. Our next set of speakers comes from the Standing Committee on Judicial Independence. We’ve got Mr. Weisenberg, Mr. Dimond, Mr. Lockemy, and Mr. Fisher. We don’t have quite
enough chairs for you all.

MR. WEISENBERG:

Good morning. I am Bill Weisenberg, the immediate past chair of the Standing Committee on Judicial Independence. To my left, Alan Dimond, a current member of the Standing Committee and the chair of a subcommittee that brought 107 to fruition earlier this year. Keith Fisher to my immediate right is a liaison in the business law section and has been for a long time with the Standing Committee of judicial independence and was the prime draft person of the resolution and report and a collaborator on the letter we submitted. I hope you have the letter in front of you that we submitted to the committee.

We would like to begin first by commending you for the effort that you have undertaken following the adopting of resolution 107. To begin to address now the nuts and bolts of
attempting to look at the processes that really need to be engaged to perpetuate what 107 was trying to achieve. And we would begin by say that this as been recognized by others is not an easy task. This is a very, very difficult task. Let me just -- and I hope we can have more of a conversation with you in the limited time allotted to you this morning. But the most recent -- the question about the most recent campaign, in many states, including my own, often times judges are appointed to fill a vacancy. They then run in the next general election for the unexpired term which is usually within two years. Since it’s an unexpired term then they have to run two years later for the full term. And then if they complete that term two years later they run again. So within a period of five or six year often times a judge can go through three election cycles. So in
trying to define the most recent
election when we get to campaign
support we may need to spend a little
time looking at that. It’s going to
vary from jurisdiction to
jurisdiction. One of the benefits of
the work of the Standing Committee on
Ethics and Professional
Responsibility and the Committee on
Professional Discipline has been this
development of commentary over the
years. So the commentary hopefully
can flush some of these things out.
What we would like to do is walk you
through very quickly some of the
things we recognize in the draft that
you submitted and some of the
questions that came to mind as we
looked at this. Let me just say to
you this is a very, very preliminary
review and the Standing Committee
under the leadership of Peter Bennett
will continue to look at this and
will continue to examine it.

MR. VEASEY:
This is a preliminary draft too.

MR. WEISENBERG:

Pardon?

MR VEASEY:

This is a preliminary draft.

MR. WEISENBERG:

Well, I think we should put preliminary board members throughout this. I think we all intended that today, Judge Veasey. I think we all recognize that this is preliminary to say it. We are joined by Judge James Lockemy from South Carolina who is the other part of our group.

MR. LOCKEMY:

Good morning.

MR. WEISENBERG:

Let’s just walk through a few of these points and maybe that might generate some questions for you. Recognizing this is very preliminary. On 2.11A4 it speaks in terms of the support to the judge’s campaign that was substantially important to the judge’s most recent campaign. Now,
we’re trying to find what does substantially important mean. I intend to do that. We do not claim to have all the answers. I’m not sure anybody does. But it’s substantially important to a judge’s campaign such a subjective term of art that it’s going to vary on each judge because it might be the endorsement of the local bar association and a particular committee. Or it might be the endorsement by a labor union in a state that has significant numbers or a chamber of commerce. So the question that we always look to in determining what is substantially important to the judge for the judge’s most recent campaign may vary significantly. So we may want to examine what we mean there and probably in the long term at least from my perspective it may well be that that will evolve through certain case law.
MR. FISHER:

My only thought is as Bill Weisenberg was saying, there are any number of circumstances and since we’re all involved in the preliminary consideration of this I mean, for example suppose if a local newspaper, the Dailey Planet, decides that it wants to endorse a particular judicial candidate, that’s a circumstance that could be a substantial importance to the judge’s campaign. It might be dispositive in terms of influencing the voters. So it’s not just the money. Although money obviously plays a role, money also indirectly plays a role when it comes to advertisements. And that I think is one of the major problems that faces elections generally and certainly the usual elections of the increasing use of a (inaudible) methods with money being funneled in from who knows where. Yesterday’s New York Times had an article about
the secrecy of super PACs and I fully expect that that secrecy will also be in election campaigns. So the judge really won’t have any idea where that money came from. I don’t want -- I don’t want to jump ahead but since it’s already been discussed here this morning by Judge Scieszinski and others perhaps the notion Judge Tessazini (phonetic) the notion of disclosure by counsel I think is of critical importance in this -- of this in time. Yet not only for themselves and their law firms, just contributions that might have been made and other support for them, but also in terms of the clients they represent. So perhaps consideration could be given to whether lawyers in that same pleading that was discussed earlier would be responsible for telling the court whether the client or clients they are representing before the court provided any support to the judge’s campaign or the
campaign of the opponent if we go in that direction too. Certainly that would be a much earlier way for the information to be filtered through than to rely on the judge’s memory or ability to ascertain this information from the public record, subject to this time is quite limited and valuable, and it prevents combing through public records for each case that comes up might turn out to be better than nothing.

MR. WEISENBERG:

If we move down our letter for just a second and I’ve asked my colleagues to jump in anytime, but one of the things that struck me, again, I have to tell you I’ve been engaged in a lot of campaigns with different candidates for many years. We’d all like to think of ourselves as competent constituents. I don’t know a campaign contributor who doesn’t consider themselves a competent constituent or competent
campaign -- what do we really mean when we talk about the competent constituent. It could be the editor of the newspaper who’s responsible for the endorsement. Is there someone who directs the deliberate -- is responsible for the significant financial support, and what we mean by financial -- significant financial support. So the common constituent may want to take a little time and try to define because it is a term of art as I say everybody likes to think of themselves as a competent constituent in a campaign and being usually responsible for the success of the campaign itself. Do any of my colleagues have any further comments on that comment?

MR. DIMOND:

I just wanted to -- Alan Dimond. I just wanted to make one point with regard to the disclosure that was discussed earlier. Florida is a public record state. All
contributions are a matter of public record. I would think as a Floridian requiring a lawyer to make a disclosure in a pleading of that which is public record would be unnecessarily redundant and an unnecessary burden. I assure you that in the appropriate cases lawyers know how to search those public records and find out whether they have an issue to be raised. Secondly, there is Florida case law that deals with the number dollars that’s still defined and it’s still very unclear, it’s unclear to people responsible who are campaign fund raisers as to what those limits are. So to the extent that the committee can come with bright line tests such as percentages or other precise measurements that may be a guide to contributions I would think that would be enormously important. I’d like to make one other comment here. Your task is
enormously difficult. It is far more complex than the drafting of 107 because you’re really in effect are putting meaning to each of these concepts which are very, very broad in their nature and very difficult to place and define. However, your search for perfection will probably go unrewarded. Therefore --

MR. VEASEY:

It always is.

MR. DIMOND:

Yes. Therefore, I think personally having had the committee’s view of this, but speaking for myself, I would think that the sooner you can come with a draft that can be considered by the house understanding that all legislation is subject to oversight and public correction, the sooner people can be given this guidance the better. And the concept that you’ll get it all right the first time I think will prove elusive and -- but it doesn’t have to be
perfect in my view.

**MS. FREDERICK:**

Mr. Weisenberg, I just realized that we don’t in fact have your letter with us today. I’m sure that we have received it but I don’t know that any of the --

**MR. BENNETT:**

I have a it. I brought it. That was sort of my --

**MS. FREDERICK:**

We will review it but we have not --

**MR. VEASEY:**

Would you email it to --

**MR. WEISENBERG:**

It was sent to attention Natalie Taliveri (phonetic) your senior researcher pursuant to your instructions. I believe that was forwarded on Monday of this week, on the 30th of January. We had instructions in which you indicated. That’s --

**MS. FREDERICK:**
We do not have it yet.

MR. WEISENBERG:

We will make sure that you have it.

MS. FREDERICK:

Mr. Link has a question.

MR. LINK:

I just have a question. First an observation, one of the -- I appreciate your comments because one of the concerns of the discipline committee obviously is the administration of any rules we adopt. Is it something that imposes a realistic burden on judges and lawyers or are we imposing because of the amorphous nature of some of the requirements something that’s very difficult to administer or find acceptable. So that obviously is something we’re concerned about and your comments are helpful in that regard. I propose though that, Mr. Dimond, I want to be clear I heard Mr. Weisenberg say that he thought...
that -- they thought that putting the requirement that the lawyer in a pleadings state the amount of the contributions was a good idea because the judge then did not have to search the public record. I heard you say that you thought it was not a good idea to require the lawyers to put that in a pleading. Was that correct?

MR. DIMOND:

Yes.

MR. BENNETT:

In a public record state.

MR. DIMOND:

In a public record state where there’s already full disclosure and I know in part it is very easy to search for the records.

MR. LOCKEMY:

You know, since y’all don’t have the letter I was going to bring the letter. The question I had with regard to this is as often happens, two trial judges or one trial judge
and another judge they’re challenging for fellow judge’s spot and say the trial judge loses. Is the trial judge since he’s not -- he or she is not victorious are they still subject to -- because those amendments since they were still in the trial and may have gotten significant contributions from someone, a party, and yet they’re losing but still on the trial bench and that person would still be before them on the trial. So are they subject or not to that. Reading the post amendment I was unclear as to whether you had to be victorious or not?

MR. MUNDHEIM:

Which way would you come out?

MR. LOCKEMY:

I come out it at if when you’re in the race if you’re a judge that you should still be bound by the ethics of the state.

MR. MUNDHEIM:

That sounds pretty sensible to
MR. FISHER:

So then it still applies to the loser too?

MR. MUNDHEIM:

It would to me.

MR. WEISENBERG:

When you say in the presentation about this applying to the states that elect judges, where there are elections and we assume, I hope correctly, that it would apply in states where we have retention elections. Because retention elections as we know, and Judge Scieszinski is very familiar with the tragic experience in Iowa. Retention elections are the ones that are very quiet and subdued have now become high profile. And the same problems that can arise in contested states where you have two candidate can also arise in retention. We assume that you want to address that and will work towards that direction. We
think that’s very, very important.

MR. MUNDHEIM:

I think Judge Veasey said yes.

MR. LINK:

Just another question. Going back to 2.11A4. The last sentence refers to a rebuttable presumption as a judge knows the amount. The use of the phrase rebuttable presumption, I don’t know if you commented on this in your letter, I haven’t seen it yet, but I’m curious as to whether you have any comments with respect to that language, pro or not?

MR. WEISENBERG:

Madam Chair, Mr. Link, from my own perspective and my own state I think we have to start looking at what we hear judges tell us. I hear judges say I have no idea who my contributors are. It’s my campaign committee that solicits the money. You know, I may see some of these folks at a political event but I don’t know where the money’s coming
from. Now, this is my personal feeling on this. I think that’s kind of crazy myself because people don’t just show up at a fund raiser event because it’s raining and they want to get in out of the rain. It’s -- most people who donate political contributions don’t wake up and say I can’t wait to make a contribution and go to political event that night. So I think we have to -- you know, I think the idea of disclosure and knowledge is important. I would point something out to the committee just in comment to 211A4, and it’s because of a 6th Circuit case that came down last year. In Kentucky and Ohio a judge can make a personal solicitation for funds in a limited situation where there are less than so many people at an event or in a large event or they can send a fund raising solicitation to a group including let’s say a Bar Association if it’s sent in by mail. In this
case I don’t know if it’s going to get to the Supreme Court of the United States but at least in a few states today because of the 6th Circuit decision the rules of engagement have changed. So we need -- when we get to this issue of presumptions if someone were to send a solicitation letter I think one can presume or maybe there should be a rebuttal presumption that they do in fact know what the source of the funds are. So I think that language there has the potential of working and raises a very important question which we will continue to work with you on. But I think we -- as the old saying, and this is my political background, I think we need to lay the cards face up. But we should presume at the beginning and we stated early on that the judges demand that they are doing the right thing. It’s not by design that they want to go and have to raise money.
But the television advertising, the other advertising is now being given pro bono to run campaigns. So this is not something people look forward to but we should presume they’re doing the right thing. They’ve been doing it and doing it with integrity and honor, and if we want a presumption that they know I think we can put that in there. But the disclosure provisions Mr. Dimond has already said that in other states that now is so expensive that with electronic disclosure it’s right there for the asking and you have to do it. So I don’t think it would be onerous or burdensome in most jurisdictions. I would turn it over to my other colleagues unless there’s questions, Madam Chair.

**MS. FREDERICK:**

Are there questions for the Standing Committee on Judicial Independence from any of the panelists?
MR. WEISENBERG:

I don’t know if my colleagues have any comments on the proposal.

MS. FREDERICK:

Do y’all have other comments?

MR. LOCKEMY:

You might make a note if you would -- I don’t want to comment because I know you don’t have the letter but look at comment seven also for example the local bar association which may give a very significant contribution that would disqualify or have a disclosure anytime a member of that local bar association. So please look at that and consider that issue.

MR. WEISENBERG:

One observation we make in our letter, and I’m sure you have it also, the world of law firms are changing dramatically today. And the mergers of law firms in many cases, what could have been a very minor -- you know, you could have a -- let’s
say you two ten person firms. What could have been, quote, “substantially important or substantial contributions” of ten may pale in comparison when you talk about the 20 or you have mergers of firms with hundreds of lawyers it really changes the dynamic. That’s something I think we can work together on as we develop the commentary.

I would like to add another comment to which Chief Justice Veasey remarked in his relation with the chief justices and the principles in the issue of disqualification (inaudible). The comments of chief justices has been a great asset throughout this process and we work very closely with them and I think their work on this project would be valuable to the success of our collective effort in the long term. But you have our letter. We appreciate the time. We are here to
continue to work with you to achieve this result. We’ll be happy to answer any further questions that any member has at this point.

**MS. FREDERICK:**

Are there further questions. Thank you all. We appreciate it and look forward to continuing to work with you on this.

**MR. WEISENBERG:**

We thank you for the courtesy extended to us.

**MS. FREDERICK:**

Thank you. Next on the agenda we have Marla Greenstein, the Executive Director of the Alaska Commission on Judicial Conduct representing the Association of Judicial Disciplinary Counsel. Welcome.

**MS. GREENSTEIN:**

I’m actually testifying in two capacities today so I’m going to switch hats halfway through and I’m going to ask Peter Webster to join me.
up here who is the president of the
American Judicature Society and
that’s going to be kind of the second
part. For the record my name is
Marla Greenstein and I’m the
Executive Director for the Alaska
Commission on Judicial Conduct is my
profession. That I’m here speaking
in that capacity on my commission has
not had the opportunity to discuss
the draft at all. I’m here in my
professional capacity as an
association member and board member
of the Association of Judicial
Disciplinary Counsel where I’m
secretary of the board. And in that
capacity I did have the opportunity
to circulate the draft among the
other board members. To give you a
little background the Association of
Judicial Disciplinary Counsel is our
national association of all of us who
are the staff that actually enforces
the code of judicial conduct in our
state. So we’re the ones that will
have to take whatever the product is and use it and actually advise. So in that respect I wanted to circulate to all my colleagues who obviously represent the whole gambit of judicial selection, campaign and we have members now in 35 of the 50 states. In addition my state we are a selection state, but I do have comments about how it might affect our state as well. So to start off obviously we’re all concerned with the changing climate of money in judicial campaigns and how that could affect judicial independence and the public’s confidence in the impartiality of the courts. To that end we’re all on the same page. And obviously as a professional who is engaging judicial discipline and we also issue judicial ethic advisory opinions we really are concerned with being able to give judges the guidance when they want to do the right thing and contact us and say,
well, what do I do now? So from those perspectives we can realize that work needs to be done in this area. The difficulty up front I think is that we’re in a new world and we don’t yet know what that new world looks like. So I know your difficult job is to kind of fashion rules that kind of looks into the future. We don’t know quite how that’s going to take place. Let me start with the difficulty obviously with any model is that it is a model and the diversity of election systems and -- for electing judges and campaigns and the restrictions they place on those activities varies substantially from state to state which is essentially a local issue. So I think up front you’re going to have that challenge of creating a model ethics provision in this qualification setting that is going to be a model.

I did want to first focus on a
state like mine, a merit election
state, and I noticed (inaudible) in a
statement that this is intended to
address the -- to test the election.
And if it’s drafted I believe it
applies to all elections which would
include non-partisan retention
elections in a state like mine. And
I know Mr. Weisenberg encouraged
that. So I think some thought needs
to be put into that. In other places
in the code there is a distinction
between provisions for retention
elections and contested elections.
And there is good reason for that
distinction. And I think that does
carryover to disqualification as
well. For example in my state
because it’s a retention election so
there is not a contested election the
only time a judge brings (inaudible)
contested retention election there
are two situations. One where
there’s a recommendation to vote no
from the judicial counsel which is an
official body that evaluates the judges. This is a relatively rare occurrence in our state. It does happen occasionally usually when there’s disciplinary problems involving the judge. But that’s one way that there could be opposition to retention. The other and more prominent and increasingly high limit event and I think in the public system we’ll see more and more of it is where there are specific interest groups with specific issue-oriented campaigns to attack judges for substitutive (inaudible). And Unfortunately the way that the rule is crafted now it doesn’t distinguish between money and support of the judge and money in opposition to it. In other words, the money in support of the judge which in our state really is sadly the issue that they’re scrambling to try to find money to support judges. The real big money is in the opposition to the
judge. And in a situation where the judge’s independence is being put at issue. And so there may be really unattended consequences for some of these disqualification provisions. For example, very concrete situations we had a very well known Supreme Court justice who was up for a retention. She in the past informed me she got 75 percent of the vote and this last time, last submitted campaign she did not -- she didn’t want them raising money from lawyers for her campaign so she basically spent her own money to tell a social media (inaudible) campaign, a very small media with little ads. But it mainly was through the support of lawyers, law clerks, just to get the word out and to facilitate getting the word out. And she was -- she won by a very well margin but was successful in retaining her seat. And one of the concerns is the court language in the disqualification
statute here could be interpreted to be non-monetary support. And so in this kind of situation where she spent her own money but only support came from a broad base of (inaudible) support and former law clerks and those kinds of things the people that would create the disqualification triggered the disqualification from big money people that -- I don’t think they’re covered by this. The people that had triggered the disqualification are the broad based lawyer support and social media. So this, you know, just this is how it might work in a retention situation and Judge Scieszinski alluded to the Iowa situation. I’m sure that it would perhaps be bigger in that kind of situation. Mr. Bennett, you have a question?

MR. BENNETT:

No, I was going to ask you to talk about the recent election and the use of Facebook.
MS. GREENSTEIN:

Oh, okay. So what I’m going to do is give some of the comments to my colleague. There is some concern about Facebook due to language. So because they are lawyers they have to enforce the code. When new language is thrown in we have no basis to know what that new language means. So some of the concern and hopefully you see the summary --

MR. BENNETT:

We have that.

MS. FREDERICK:

Yes, we do.

MS. GREENSTEIN:

You do have it, okay, terrific. So I won’t go into too much details but just to highlight some of the problems in the other support as I mentioned, you know, that would be difficult in a retention situation also attaching other support whether it means monetary, gifts or something else, you know, that’s hard for us to
figure out without some definition.
In the substantially important
standards what I wanted to put some
emphasis on here, as lawyers we like
having objective standards to
enforce. And so we have a nice
objective standards from our
enforcement perspective in the
opening language to the 2.11 and that
is, you know, that is a judge shall
disqualify in which the judge’s
partiality might reasonably be
questioned. So we have some concern
that that standard has somehow been
shifted with this provision. We kind
of know what that reasonable standard
is because we have some case law in
our state that we can use to follow.
So that substantially important
association of judges objective
standard --

MR. MUNDHEIM:

Can I just ask you, don’t you
read that such as a reasonable person
would believe, do you think that
imports an objective standard and if
you don’t would you give us some
language that you think might do
that?

**MS. GREENSTEIN:**

I think if you could echo the
language in A so it would be clearer
then --

**MR. MUNDHEIM:**

A of course still is applicable
and we’re trying to give more flesh
to that.

**MS. GREENSTEIN:**

Okay. In our state we have that
in case law in case of impropriety
that basically what (inaudible) is
where the reasonable objective
observer would think that impropriety
is applicable. So I think what
you’re suggesting is you created a
parallel who a reasonable person
might think this supports it.

**MR. MUNDHEIM:**

That at least I think was the
intent of the draft.
MS. GREENSTEIN:

Right, right. And as I have asked about Caperton, like my colleagues, are concerned. So it’s new so I don’t know. I think it would be most comfortable if we could keep it within the frame of what we already know.

MR. LINK:

In comment two -- the proposed additional language in comment two to the rule 2.11 there’s some language that says campaign committees may solicit campaign contributions and financial and other support. Would you -- how do you read the and financial and other support, and would you prefer including financial and other support or is there -- is that not --

MS. GREENSTEIN:

I think it’s the other support that isn’t the problem. The financial support, we all know what financial support is.
MR. LINK:

I guess my question is more to read that is campaign contributions and financial support meaning financial support in addition to campaign contributions. Does that create an ambiguity that would be resolved by saying including financial support or does it not create an ambiguity?

MS. GREENSTEIN:

Oh, you're just asking about that. I'm not in a state where we deal with these conditions. But I will -- I would think that your Rephrasing would be clearer. Yeah, I see what you're saying is whether -- whether campaign contributions and what other financial support would there be. Yeah, yeah, I think that probably would be clearer.

And then I did want to address the other aspect of a new concept is this rebuttable presumption. And so when we’re enforcing this provision
and you have this rebuttable presumption we don’t know exactly how to read it. So that’s our next question is, okay, if this is rebuttable presumption so if the judge says we didn’t -- I didn’t know, is that enough to rebut the judge’s statement I didn’t know, or how much more do you need to rebut that presumption of knowledge. So it’s a new concept for us. We always have a problem when we’re enforcing these kinds of things. We are not mind readers. We don’t like to have to go into the mind of the judge.

**MR. MUNDHEIM:**

Do you write opinions or evaluate opinions and other things?

**MS. GREENSTEIN:**

Yeah, in my statement.

**MR. MUNDHEIM:**

so in the course of administrative language that is not familiar you can deal with actual situations or hypothetical situations
and provide guidance and you can flesh it out?

**MS. GREENSTEIN:**

Right.

**MR. MUNDHEIM:**

Let me just say that -- as we’re talking about terminology here and the meaning of terms, we have some old terms and some new terms, and I think that one of the things that our committees should address at the end of the day or before the end of the day is terminology. In the judicial code there is terminology but it’s incomplete in my opinion. For example, it is not incomplete as to the definition of knows that is actual knowledge that can be inferred from the circumstances. It’s the same as in the model rules. The model rules, however, are a little more explicit on some of the terms we’re using here and perhaps we need to review whether the terminology used in the model rules of
professional conduct need to be transported the heart and whole into the judicial code. For example, in the model rules reasonable is defined and clearly shows the objective standard. In fact Mr. Mundheim referred to them, and substantial is defined in the model code. Substantial when used in reference to the degree or extent denotes a material matter of clear and weighty importance. We try to import that -- import that into the term we have here but it might be good for us to review the terminology section of the judicial code in any event.

MS. GREENSTEIN:

And I did pass on in my written comments just a hypothetical from one of my colleagues about how difficult of applying even as defined as a standard. So you can look at that. One final comment from my role with the Association of Judicial Disciplinary Counsel is there’s a big
emphasis in the judges being aware of
the campaign contributions. And
that’s a major step from the history
of the judges and campaign
contributions and their role with
their campaign committee. It creates
a bit of a inconsistency there. I
think it reflects some more
contemporary reality, but you do need
to be aware that you do have this
history in the model code of
encouraging judges to not be aware of
the contributors and have separate
campaign committees where they’re not
involved and not really hands on.
Obviously we retain the inability of
the judge to directly solicit. So
there’s a shift there and there are
-- I’m just raising it because this
is the model. And there are still
several states that maintain that
blind campaign approach even though
all states have some kind disclosure
claims. So technically it is public
record. It’s how close the judge
will need to get to know, the awareness of their campaign. So it’s just philosophically an issue. We are in a different world.

**MS. FREDERICK:**

Switching hats?

**MS. GREENSTEIN:**

Yes, so I'm --

**MR. MUNDHEIM:**

I just wanted to say that last point that you made Mr. Weisenberg really made that same point which is that if you look at it in terms of perception in the public mind the public believes the judges know, and therefore I think our theme (inaudible) judges to know. So that’s more constant with what the public --

**MS. GREENSTEIN:**

Yeah, and it clearly has been an active problem with public disclosure, at least that’s in different states.

**MR. LINK:**

Before that as the administrator
of the judicial conduct I'm curious
one of the process issues we’re
wrestling with is a proposal to have
a model Supreme Court rule with
respect to making some records
regarding contributions to judicial
campaigns. And we sort of kicked
that around as to whether or not
that’s -- it’s not a code of conduct
in a model for Supreme Court rule as
an alternative vehicle. I'm curious
as to whether you think that is a
realistic option or whether that’s
not. I’m just wondering whether you
would have any view with respect as
one means to address some of these
issues?

MS. GREENSTEIN:

To clarify, what was the rule?

MR. LINK:

Well, it’s set forth in our
working draft of December 28th on page
eight, and it’s a proposed model of
Supreme Court rule for maintenance of
records regarding contributions to

ASSOCIATED REPORTERS, INC.
Mark LaCour, C.C.R.
(225) 216-2036
the judicial campaigns and it could be a Supreme Court rule that require lawyers and their law firms to submit to the court that a court should maintain records of their firm’s and their campaign contributions. I'm just trying to get some feedback as to whether or not -- what you think about that as a method of collecting this information?

MS. GREENSTEIN:

I would really, you know, I know my critics always read about additional administrative responsibilities. Right now I think all the courts receive the financial disclosure reports from the judges. So I -- you know, I can see requiring the judges to file as part of their -- you know, under the code that they have to file their financial disclosure with the court. So I think if we work to have the judges file it, requiring lawyers and law firms to file could be much more
problematic. I mean in our state we allow -- we have an agency that is required to get all the -- just to keep a record of settlements just so the court can keep track of lawyers who forget to file it and then there was no way to go back and identify the people who didn’t file because the idea of filing was to get a notice of problems that don’t know how do you know who did file. I think that might be a problem.

MS. FREDERICK:

All right, we can shift now towards comments from Mr. Webster?

MR. WEBSTER:

Yes.

MS. FREDERICK:

-- from the American Judicature Society.

MS. GREENSTEIN:

Thank you. And in that capacity I'm the vice president for the American Judicature Society and I sit as a member of their judicial ethics
advisory committee. And Justice (inaudible) Fey who I mentioned earlier actually chairs that committee. So she chaired the -- (inaudible) comment and Peter Webster who is the president of the American Judicature Society in private practice. We didn’t really have the (inaudible) against any written comments to you. Our board just met yesterday. So you don’t have any written comments. We can certainly provide those at a later date, but the concerns of the American Judicature Society is much more global. There were concerns with the particular language of the American Judicature Society. The committee was more concerned about taking a little piece of what’s a bigger problem and much bigger issue. So just looking at disqualification as a way of addressing this new environment of campaign finance of money that will influence judicial
elections and impressions on judicial independence and really not addressing a much more complex issue. So we’ve encouraged, I know your committee has the capacity to do it, but to encourage the ABA and the committee to take an even broader view on the possible facts in the new world of campaign financing with this united world we’re living in we have our judicial selection issues and judicial ethics. It may not just be disqualification measure. But we really may need to look at some of the other campaigns. There is some look at that here. In that respect (inaudible) has some expertise in that area and we’d like to have a bigger effort. Once again just to say the committee did want to bring to the attention that the disqualification provision (inaudible) emphasis more of the support of the judge rather than any money that could go into support to
the candidate against the judge. So that seems to be the real judicial independence right now, is the money going in the other direction and (inaudible) needs to address that. And that actually, you know, in theory be a change if there is a big corporate donor who is part of a PAC or something. I don't know that there is a disqualification or if there should be. That’s just a thought along those lines.

MS. SCIeszinski:

Marla, let me interrupt you and ask you if a logical extension of the point that you just made might be that in addition to a potential debt of hostilities there might be a context where contributions being made on behalf of special interest or an issue and that creates something that impairs impartiality. And for lack of a better term I'm going to call it a peer factor, that a judge might realize if I rule a certain way
on this the funding against me is
going to be unleashed because of the
issue involved rather than the party.
Is that a logical extension of what
you're talking about?

**MS. GREENSTEIN:**

I don't know it I want to go
that far because I think we expect
judges to be courageous and we call
them as we see them. So I'm not
comfortable going that far, no. I
think more recent of the public's
perception of the judge's ability to
maintain and if it were to be a
trigger for disqualification it could
have they don't like that judge, they
don't want that judge sitting on
their case. And it is a trigger, all
they have to do is run the campaign
against the judge and get the judge
off. (Inaudible). And that’s part
of the challenge.

**MS. FREDERICK:**

Ms. Greenstein, I hate to
interrupt but we are over the time
allowed for your presentation and if you have just a couple of concluding remarks you’d like Mr. Webster to say something, but please do submit. We recognize how important AJS can be to us in further refining what we have here. And if you would submit some written comments we’d love to work with you on getting your thoughts incorporated into this exchange.

**MS. GREENSTEIN:**

Okay, thank you.

**MR. WEBSTER:**

I would like to emphasis one thing that Marla said. I was a judge in Florida for 25 years, both at the trial and the appellant level. This year in Florida we have three justices standing for merit contention. They happen to be the last three justices on the court appointed by a democratic governor. They have already drawn organized opposition. I’m concerned that the rule as proposed with regard to
substantially important non-financial contributions may have a very serious unintended consequence and that would be because prominent lawyers and former judges in the state who are now practicing law who would otherwise speak out in support of retention of the justices, not to do that out of fear that that would be considered substantially important non-financial contribution which might trigger those three justices should they be retained recusal in future cases involving let’s say a former Supreme Court justice who speaks out or would speak out. I think that’s something you really need to be concerned about and I think if this rule were in effect in Florida today it would have a serious chilling effect on support type prominent lawyers and formal judges in the state for the retention of the justice system.

MS. FREDERICK:
Question for Mr. Webster?

MR. VEASEY:

Mr. Webster, I just wanted to say we do respect quite a bit the American Judicature Society. I notice that in the audience here is the former president, Tim Johnson, from Delaware and --

MR. WEBSTER:

That’s right.

MR. VEASEY:

-- and AJS celebrated Delaware’s merit selection system as being pretty good.

MS. FREDERICK:

Thank you both for your comments and we look forward to seeing your written comments as well. Next on the agenda is Adam Skaggs, senior counsel of the Brennan Center for Justice. Welcome, Mr. Skaggs.

MR. SKAGGS:

Thank you. I'm Adam Skaggs, senior counsel with the Brennan Center for Justice and NYU School of
Law. And I want to thank the current committee for the opportunity to speak with you today, and more importantly I want to thank the joint committees for the exceptional work that has been put into the draft amendments that we are considering today. I think it’s remarkable that the committee has acted so swiftly after the adoption of resolution 107 and I commend all of you for that extensive work. I just wanted to send in some written comments that go into detail on a number of the issues, many of which you have already heard about this morning, and I don’t want to spend unnecessary time retreading those. I do want to highlight a couple of the points that I made in those written comments and you’ll have a chance to see those later on too. The first issue is responding to one of the comments that was made in some comments that have already been submitted to the
committee, which suggests that this is not a problem and this is sort of a solution in search of a problem. There were comments to suggest that there hasn’t been too many cases in which alleged conflicts have arisen based on campaign spending. And I want to just take a moment to rebut that. I disagree strongly with that assertion. The Brennan center in conjunction with our partners, Justices at Stake campaign and the National Institute on Money in State Politics has issued, going back all the way to 2000 a series of reports for which document what can really only be described as an explosion of spending in state judicial races. We issued last year a comprehensive report on (inaudible) between 2000 and 2009. That report demonstrated the spending in judicial elections as more than doubled from the previous decade. More recently just last year we issued a new report on the
2009/2010 judicial election cycle and the patterns have continued. During that time there was a record established for the amount of TV spending. We also saw a dramatic increase in the amount of spending on TV ads by non-candidate groups, so in some states political parties and a number of other states by special interest groups that had come in and really flooded the airwaves with ads in some cases supporting judges, more often attacking judges, often with entirely distorted if not outright false accusations and allegations against the judges. I think this culminated in April of last year with the Wisconsin Supreme Court election in which not only did the special interest groups shatter or distort those records for spending on TV ads but really I think took the tone of that election to the limit. This is something we’ve seen cross the country, and by now this pattern is
well established. So I think it is absolutely important that the joint committees continue this work and I also commend the Standing Committee on Judicial Independence for their longstanding work on this issue. With respect to the amendments as drafted currently the Brennan Center strongly agrees with the direction that these amendments are going and we think it’s a terrific start. And I understand we’re in a preliminary preliminary stage and I’m hopeful that some of the comments we have this morning will help to refine some of the issues.

A couple of issues I want to comment on. First, with respect to the substantial importance of standards. I understand this is designed to be an objective standard, I believe it’s comment eleven that says this should be assessed due to point of view of a reasonable person observing the situation. I think the
danger here is we’ve created sort of a second prong or an analysis within an analysis where I think judges are faced with the task of analyzing a situation will have to consider, first, what will an observer think, will this be substantially important to my election. And then the second step, well, now what would a reasonable person think regarding whether that substantial importance would or would not raise reasonable questions about my impartiality. And I'm not sure that adding that second prong to the analysis helps substantially given that I think that there already is a body of precedent interpreting what the existing standard whether certain factors raise reasonable questions about judicial impartiality. I'm not sure that additional stage of analysis materially helps that process. So I do want to flag that, although others have spoken on that. But I do wonder
whether keeping the existing historically used standard wouldn’t accomplish the same ends.

MR. VEASEY:

Let me just say that everybody submitting comments on this proposal the joint committee welcomes any drafting language that anybody wants to submit to us. And, you know, it’s very helpful to have comments on our drafting language but we would really like to have somebody put some language up there that we can consider in drafting the language.

MR. LINK:

Mr. Skaggs, I cannot let the opportunity going by with the representative of the Brennan Center for Justice to ask, I take it your view is that this regulatory effort does not run afoul of Citizens United and other cases and that they’re not first amendment issues here that might be issues that (inaudible). For example, it might be chilling.
Could you discuss that for the record briefly.

**MR. SKAGGS:**

Absolutely. That is strongly our position. Citizens United may well suggest that it is problematic of our first amendment to regulate or restrict campaign activity whether it be spending in favor of judges, or in other political election contexts but I think nothing against Citizens United is there any of the other cases that we’ve seen in front of the Supreme Court lately says anything about recusal other than what is said in the Caperton decision, which is whatever free willing electioneering we want or we must accept on the judicial campaign trail after that election is over and the judge takes his or her seat on the bench there’s another part of the constitution that cites the first amendment that we have to look at and that’s the due process clause. And nothing in the
first amendment suggests that the right to a fair and impartial trial before an impartial tribunal is trumped. So I think in reconciling to the extent that it’s at all possible, this is a united decision with the Caperton decision both of course written by Justice Standy (phonetic), I think the only way to reconcile this is to say whether -- whether the first amendment guarantees this free willing electioneering the due process clause comes into play after the judge is seated on the bench and it clearly establishes the right. And I would argue the duty of states to regulate in this area and to keep up strong recusal policies and standards.

As to, Mr. Veasey, your comments, I certainly appreciate that it’s a lot more difficult to write the rules than to nitpick the rules. So I would accept that for the Brennan Center I would be very eager
to continue working with the joint committees and I will do my best to see if there are any suggestions.

The second point I wanted to address has to do with -- again, we talked about the rebuttable presumption that the judge should know about on this campaign contributions that are at issue. And I think some of the discussion about whether or not lawyers should be charged with disclosing this on the record and a public record state where some of the campaign contribution information is already available, leads to a larger question that we haven’t talked about this morning. And it’s something in my testimony, written testimony I mention. And that has to do with independent expenditures and the role that they play in judicial campaigns either supporting or opposing justices or judges, excuse me. It seems like they could think about the
Caperton decision. And that case involved three million dollars in spending against one judge in support of the eventual victor in that election. Only a thousand dollars of that three million dollars was a direct contribution to the judge’s campaign. Now, if the judge were charged with knowledge of direct contributions to his campaign committee that 1,000 dollars that that judge would know about might not arguably bring repercussions about impartiality. I think it’s important to look at the three million dollars is surely the important figure in that case. And I think a lesson of that and a lesson of the research that I tried earlier that shows an increasing role in outside spending suggests that it’s very important that the final rules that the joint committee has developed very clearly and explicitly address the role of independent expenditures. Now, there
is some language in the existing drafts that could be interpreted to capture independent spending, some of the references to indirect contributions, some references in the 2.11A4 that talk about contributions that are paraphrasing but effectively routed through a third party organization. And I think those may be intended, I'm not entirely sure, maybe intended to capture some of this spending. But I think the joint committee would be well advised to see whether even more precise language can be used. The Tennessee Supreme Court, as I'm sure you all know, recently adopted new judicial ethic rules as well as some court rules and they very specifically in commentary to their new rule 2.11A4 suggest that if the support in question is financial in nature the judge is looking into the recusal issue must examine whether there's any difference between direct support
given to his campaign or independent expenditures of all the campaign. And I think that particular language I'm not suggesting it should definitely be what the joint committee chooses, but I think the lesson it said by addressing that that language very explicitly will make the rule a lot more meaningful in today’s election environment and it will make it easier for a judges applying these rules to know.

**MR. MUNDHEIM:**

I think you're right that the indirect language and new language is intended to pick that up. Obviously it’s not always so easy to know who’s really making those contributions.

**MR. SKAGGS:**

Well, I think that’s exactly right and I think just to pick up on your point as well as something Mr. Fisher said earlier this morning regarding super PACs, now thankfully we haven’t seen the kind of super
PACs that we’ve seen in presidential races today in judicial races but we’ve seen something pretty close, and that’s the explosion of special interest groups, often they don’t disclose who it is that is writing the checks to fund their election activities. And this is why I think that it would probably be preferable for the rule -- and in the draft you’ll find the rule 5.1A the alternative draft I think is an effective start. I think it would be more appropriate to have lawyers either in an initial pleading or when they make an appearance after the judge has already been assigned to a case to at an early stage of the proceeding file an affidavit or some sort of standard that states whether how much the lawyer’s law firm in the parties represented by that counsel have donated or have spent, whether in direct or indirect contributions or agreed upon expenditures. And
that’s the only way I would submit
that we’re going to get knowledge
about independent spending on
whoever. Because judges by
definition won’t know about
independent spending and who it is
that supports these groups. so I
would urge an expansion of the draft
rule 5.1A to not only require lawyers
to show us what they have spent but
also what their clients have spent.

MR. MUNDHEIM:

How are you going to get it? I
mean we’ll have to deal with the
notion that lawyers do have
obligations of confidentiality, vis-
a-vis, their clients. If I find out
from my client that he spent X that
doesn’t mean I have to write a
disclosure unless you have
legislation.

MR. SKAGGS:

Well, obviously to the extent
the client’s contribution are to the
director’s campaign that’s not going to
concern us, obviously that’s part of the public record. I’m not sure I would entirely accept the point that there’s an unbounded right to the disclosure. Obviously comprehensive legislation that would require disclosure (inaudible) I would argue that the courts have the power in a particular proceeding based on the interest the courts have to ensure that due process rights of personal litigants to require the disclosure of that political spending.

**MR. MUNDHEIM:**

When you submit the initial material would you think about that or how you really would have a lawyer make that? It’s a different thing if the judge says to the party I want you to disclose.

**MR. SKAGGS:**

Well, that’s a fair point. That’s a fair point. You know, I think the idea I’m getting is that both parties and their counsel would
do those things.

The very last point I’d like to make quickly is we talked a moment ago about additional court rules that might be thought of as a part of this process of reform. And one of the things that I would urge, and again to highlight the Tennessee example of a couple of weeks ago, it’s the importance of court rulings that both require rulings in writing or on the record when people request or deny. I am providing meaningful (inaudible) for review of those. I think one of the important aspects of reform here to put it in the vernacular, getting a second opinion so that the judge being challenged doesn’t alone have the last word.

MR. VEASEY:

I think that’s covered in 107, the resolution 107?

MR. SKAGGS:

That’s exactly right. And I recognize that that’s not a rule
appropriate for inclusion in the model for rules of professional conduct, but to the extent the committee is going to pick that up from resolution 107 and emphasize the importance of that I would commend it.

MR. BENNETT:

Adam, before you finish, based on what the Brennan Center sees on the ground how important is this work to get from double preliminary to the published product?

MR. SKAGGS:

I think it’s extraordinary -- extraordinarily important. You know, Caperton come this summer will have been decided that three years ago while some courts have taken important steps forward it’s relatively a handful. Only about ten states adopted new rules. So I think to the extent ABA can set an example that will encourage other states to follow suit it’s vitally important.
I will just say, however, I think in this case it’s more important to get these rules right than it is getting them done quickly. And I know the joint committee has already had a tremendous amount of work in the past six months or however long it’s been since -- since the August meeting and I commend them for that. But I think this is something that’s definitely appropriate to take the time to hear as we are this morning from all the interested groups and people.

**MS. FREDERICK:**

Thank you, Mr. Skaggs, and we appreciate your coming.

**MR. SKAGGS:**

Thank you.

**MS. FREDERICK:**

Next we have Matthew Berg from Justice at Stake.

**MR. BERG:**

Good morning. My name is Matthew Berg and I’m here on behalf of the Justice at Stake campaign.
Just to give a little bit of background, Justice at Stake is a non-partisan organization where we keep our courts fair and impartial. We’re part of a national coalition of concerned civic and legal leaders promoting substantive and procedural forms and to secure a fair and impartial judiciary. We seek in particular to reduce situations where judicial campaign conduct (inaudible) and special interest pressure can cast the impartiality of judges. We have more than 50 partner groups from across America and across the local spectrum, a number of judges, academics, business and political leaders of democrats and republicans. We don’t endorse candidates for judicial office but we do educate the public and work for reform of such policies and special interests out of the court room so judges can do their job protecting our constitution, our rights and the rule of law. I shall
also note that our views in my testimony today do not necessarily reflect the positions of all of our partner organizations or board members. As Adam Skaggs highlighted before me a report we publication in collaboration with the Brennan Center and the National Institute of Money in State Politics has noted the skyrocketing spending in judicial elections across the country. And in light of these figures and in the aftermath of the landmark United States Supreme Court decision in Caperton we have been using -- we have been urging states to adopt stronger rules.

I’d like to start by congratulating both committees for their work in revising the ABA model for judicial conduct to address these challenges. Last fall the ABA house of delegates adopted resolution 107 urging states to adopt new guidelines governing the disqualification
requirements for judges who are
elected. We admire the speed with
which this committee has accepted the
challenge with revising the model
code in order to provide addition
guidance to the states.

Before I get to my remarks I
should mention that we work quite
closely with the Brennan Center on
judicial reform across the country.
With that in mind a lot of the points
I would make are similar to the ones
that Adam Skaggs made before me and
I’ll do my best not to cover the same
exact ground he covered. But first
what I wanted to do was talk about --
like Adam did I want to respond to
those that suggested that this might
be a solution looking for a problem,
albeit in a slightly different way.
I don’t want to go over the details
about the tremendous rush of campaign
cash in the (inaudible) across the
country because Adam Skaggs already
talked about that. Instead I want to
focus on the damage this has on the public perception of justice in our courts across the country. Our organization has conducted several statewide and nationally public surveys, whose results illustrate a dramatic impact that campaign spending has on people’s perception of the court system. In several national surveys we’ve asked voters how much influence they think campaign contributions have on judges and their decisions. Going back to 2001, 76 percent said that those contributions had some or a great deal of influence. In 2004 the number was 71 percent. It was 71 percent again in a survey conducted in 2010 and then the 2011 national survey it was 83 percent. Additionally in 2011 when we asked whether a judge should step aside when one of two opposing parties in the lawsuit spend a significant amount on that judge’s campaign 93
percent of Americans said yes. Statewide surveys have shown the same trends. In 2008 a survey in Wisconsin showed that 78 percent said they thought campaign cash at least some influence on judge’s decision and in 2010 a West Virginia survey where the Caperton case occurred that number was 78 percent. Then in a 2011 survey we did in North Carolina it was 83 percent. Voters have also expressed general concerns about the amount of cash being poured in judicial elections. In a 2008 survey in Minnesota 78 percent said that they were at least somewhat concerned. In the 2010 West Virginia survey I mentioned earlier 68 percent said they were concerned about campaign contributions to judges. A 2011 North Carolina survey had 79 percent expressing the view that campaign contributions to judges were a serious, a very serious problem. Finally the 2011 poll we conducted in
Wisconsin which showed that the approval rating of that court had shrunk significantly in recent years, 88 percent said that the rising costs of judicial elections combined with a deteriorating general tone were somewhat or a very serious problem.

The last survey I will mention was one we conducted in 2001 along with the National Center for State Courts which surveyed nearly 2500 state judges across the country. In that survey almost half the judges said that campaign contributions influenced the courtroom decisions of some judges in America and in most elected states Supreme Court justices reported feeling pressure to fund raise during their election years. Taking together these survey results show that there is a problem that needs to be address and that recusal rules need to be meaningful and constructed in a way that it helps the public have faith in their court
system. So with that in mind I just want to turn you to a couple of comments on the proposed rules. First, like many others mentioned we had some concerns with the substantially important language that appeared in proposed rule 2.11 subsection A4. As other have pointed out it appears to be a subjective or at least a complicated standard for judges to apply. And in our view to offer some constructive drafting advice, we think an objective standard similar to the one recently adopted by the Tennessee Supreme Court could be more appropriate. The corresponding Tennessee rule 2.11 subsection A4 which we have labeled one of the most forward looking recusal rules in the country at this point, requires a judge to disqualify him or herself when he or she has received campaign contributions or other support such that -- and I’m quoting from the rule, the judge’s
impartiality might reasonably be questioned. We think that this provides a clear standard because it relies on an objective reasonable person rather than bring subjective factors in the analysis. In addition we think it adds consistency to the rules overall by repeating the language in 2.11 subsection A.

Second, we looked at comments on six through nine, which mention many of the considerations that Caperton talks about in that conferences of chief justices that was talked about, judges using to evaluate campaign contributions and other expenditures as it relates to the recusal question. And we felt that the drafting could just be a little bit cleaner in terms of those rules. Again, we point to the rule that Tennessee recently adopted where comment seven calls on judges to balance several factors on campaign contributions and expenditures and
how to consider those factors when addressing this question. I’ve included those in the written testimony that I emailed yesterday, which I assume you guys either have or will get.

MR. VEASEY:

I’ve seen it.

MR. BERG:

And I’m not going to go through the process of reading it because I don’t want to take up too much time here. But they’re in -- they’re in the proposal I sent yesterday. So in general I think -- I think the Tennessee model is a really, really strong one and I would just urge this committee to take a look at that and I’d be happy to do the work in getting it into your hands if that would be helpful.

Finally, we wanted to just echo some of the concerns about this shift in the rule 2.11A4 towards a rebuttable presumption that judges be
made aware of the campaign contributions made to their campaigns. First, we’re a little bit concerned that in some cases this rule may conflict with the spirit of the rules in canon four which appear to insulate the judges from knowing who their campaign contributors are. It might confuse some states that have taken that lead. Second, we would just urge further examination of any possible administrative burdens that this rule might create on the judges. Bearing in mind that it may add to their already full dockets.

In closing, we just want to congratulate the committee for the attention that it has given to this important issue. The issue of recusal is obviously growing rapidly more complicated across the country as campaign spending increases. And we believe that the new guidance from the ABA will be tremendously helpful in helping push states forward in
adopting stronger rules in light of Caperton. Thank you for your time.

**MS. FREDERICK:**

Thank you, Mr. Berg. Do we have questions?

**MR. LINK:**

Mr. Berg, let’s assume we agree with you that there might be a conflict between the reasonably rebuttal presumption of 2.11 and 4.4 which requires a judge not to know, how would you resolve that conflict? Which of the two would you recommend is a better policy to adopt?

**MR. BERG:**

We haven’t had detailed organizational conversations about this. But just from a personal perspective I think putting that burden on the litigants to do that research and find the information in the public record. If a litigant has a problem with the amount of money the opposing lawyers have given to a judge’s campaign I think placing the
burden on filing a motion raising the issue with the judge is the simplest way to do it. Then it relies back on the principles of our adversarial system which rely on litigants to put the information before the judge that the judges need to make whatever decision they need to make in the case.

**MS. FREDERICK:**

Thank you. The final speaker of the morning is Robert Cummins.

**MR. CUMMINS:**

I’ve come to ask you to slow down the train. Frankly all of the focus on Caperton is wonderful and it certainly needs to be addressed, but I respectfully submit that what is clearly in my opinion an improvident decision by the United States Supreme Court, Citizens United has put judicial independence at risk. The only reason I’m here actually is because I am concerned. Having been a trial lawyer for about 50 years I
chaired the Standing Committee on Profession Discipline. I’ve had the privilege of being an advisor to both committees when Mark Harris was chair. I’ve spent a number of decades involved with lawyers and judicial conduct. And particularly giving the experiences that we’re currently having in Illinois I’m convinced in that unless this committee expands its horizon and addresses the serious implication of Citizens United you won’t be doing your job. As I indicated in some preliminary remarks that I’m up to my ears in some trial preparation so I haven’t really been able to assemble anything extensive. I do think what you’re starting is great but there is a lot more to be done. And I think the more to be done has to focus more on Citizen United than Caperton. In my judgment the Caperton circumstances are in many instance a no brainer. I also think that your
efforts with respect to (inaudible) 
rules of professional conduct include 
as much attention this is making as 
they do constructive guidance to 
lawyers. Let me give you a couple of 
examples that we’re experiencing and 
have experienced in Illinois. I 
think, I hope you’ve had the benefit 
of seeing the information that I 
supplied with respect to the 
potential election of Justice 
Kilbride. 

MR. VEASEY: 

We have. 

MS. FREDERICK: 

We do have it, yes. 

MR. CUMMINS: 

And if you saw those ads that 
I’ve sent, if you’ve had the chance 
to see the scripts, that activity in 
opposition to Justice Kilbride was 
predicated on the fact that he was 
perceived as one who would not 
sustain caps on punitive damages. A 

justice in the Iowa Supreme Court
situation parties perceived that it was time to get rid of those three judges because they supported same sex marriage. If we don’t come to a generic solution that fairly addresses the implications of both Caperton and Citizen United we’re going to be letting judges down in a big way.

We also need to address for example, and I know some of the people in the audience are not familiar with what happened with Justice Kilbride. So I’ll just give you a quick sliver. An organization called Just Facts, it sounds like a great crew, right? They just want justice. They decided to go after Justice Kilbride and in doing so they conjured up a series of television and radio commercials that suggested that Justice Kilbride was soft on crime. Not only soft on crime but that he endorsed people that rape, pillage and murdered. Our Illinois
State Bar Association came to his rescue to some extent because we were able to provide him with a public statement that he could disseminate which condemned these false and misleading attacks on him. What concerns for me for example is rules of professional conduct. What about the lawyers who are involved in crafting and advising these special interest groups who participated either actively or passively in preparation of false and misleading condemnation to the judicial officers because they’re on the wrong side of the some socially or morally hot issue. Are we giving those lawyers a pass when they know what they participated in is conduct that is clearly in violation of the fundamental principles of lawyer conduct? We don’t address that at all. And what about the judge in jurisdictions where judges can’t solicit support? The sort of thing
that we’re saying, well, in the context of Caperton we want to eliminate the need for judges to go out and hustle money and solicit support from bar groups and other organizations. But what happens when a judge is hit with an onslaught of millions of dollars and has no capacity for raising money that would allow him or her to respond to those attacks. Shouldn’t the code be amended to liberalize the opportunity for judges to fight fire with fire and what are the implications of that? I really believe if we step back from this process at the moment, and while your efforts are certainly in the right direction, I think we’ll realize that the real -- the real problem here has not yet been addressed. So I flew down here today this morning and I’ll supplement my remarks with -- hopefully with more constructive suggestions. But I find it difficult to comment on these
rules because I don’t think these rules are sufficient. I feel unless we address, not only Caperton but the implications of Citizens United neither the ABA, nor AJS or any of these wonderful organizations will be doing their job. So that’s my pitch.

MR. VEASEY:

We welcome your drafting comments, and I know your involved in a trial or something right now. But we appreciate your flying down here this morning to give us your thoughts. But we would really like some drafting language.

MS. FREDERICK:

Are there any questions for Mr. Cummins? We do appreciate that. Thank you. Ladies and gentleman, we are out of time although we are remarkably on time. If there are people in the audience who would like to make brief comments now is the time. If not, as I said at the beginning you are welcome to submit
comments in writing through the ABA staff or through any member of this panel of committees. And once again thank you for your attention. We look forward to working with you as we continue to refine this draft. Does anybody have any closing comments or --

MS. SCIESZINSKI:

We’re adjourned?

MS. FREDERICK:

We’re adjourned. Thank you.

THE HEARING ENDED AT 11:30 A.M.

* * * * *
I, Mark LaCour, Certified Court Reporter, in and for the State of Louisiana, the officer, as defined in Rule 28 of the Federal Rules of Civil Procedure and/or Article 1434(b) of the Louisiana Code of Civil Procedure, before whom this sworn testimony was taken, do hereby state on the record: That due to the interaction in the spontaneous discourse of this proceeding, dashes (--) have been used to indicate pauses, changes in thought, and/or talk overs; that same is the proper method for a Court Reporter's transcription of proceeding, and that the dashes (--) do not indicate that words or phrases have been left out of this transcript.

Also, any words and/or names which could not be verified through reference material have been denoted with the phrase "(inaudible)."

Mark LaCour, C.C.R.
# 89054

ASSOCIATED REPORTERS, INC.
Mark LaCour, C.C.R.
(225) 216-2036
CERTIFICATION

I, the undersigned reporter, do hereby certify that the above and foregoing is a true and correct transcription of the stenomask tape of the proceedings had herein, taken down by me and transcribed under my supervision, to the best of my ability and understanding, at the time and place hereinbefore noted, in the above-entitled cause.

I further certify that the witness was duly sworn by me in my capacity as a Certified Court Reporter pursuant to the provisions of R.S. 37:2551 et seq. in and for the state of Louisiana; that I am not of counsel nor related to any of the counsel of any of the parties, nor in the employ of any of parties, and that I have no interest in the outcome of this action.

I further certify that my license is in good standing as a court reporter in and for the state of Louisiana.

Mark LaCour, C.C.R.
# 89054

ASSOCIATED REPORTERS, INC.
Mark LaCour, C.C.R.
(225) 216-2036
broadly (1)
8:10
brought (2)
27:9;38:9
burden (5)
19:4;36:7;39:15
burdens (1)
104:12
bureaucratic (1)
46:17
business (3)
5:8;27:12;95:17
buttressed (1)
8:3

call (4)
2:17;19:12;72:24;73:9
called (4)
calls (2)
12:19;102:23
came (7)
10:18;14:2;29:18;33:5;44:17;56:5;110:1
campaign (73)

campaigns (11)
33:3;34:19;46:3;51:14;52:16;54:14;67:7;68:1;71:15;85:22;104:3

can (37)
6:12;9;8:15;10;21:10;25;20:8;8:24;29:13;36:19;37;17;17:21;42;21;22;44:18;22;45:9;46:10;48:9;52;2;58;18;23;62:24;63:1;18;64:22;68:18;69;5:14;70:12;74:5;78:16;82:13;87:15;93:23;95:12;23
candidate (3)
32:10;42;22;72:1
candidates (2)
34:20;95:19
can (1)
104:6
capacities (1)
49:23
capacity (6)
50:9;12;17;69;22;71:5;111:9
caperton (17)
10:25;11:13;60:3;83:16;84:7;86:1;93:17;96:15;99:8;102:12;105:2;106:16;107:22;109:7;111:2;112:3
caps (1)
108:24
capture (2)
87:3;11
card (1)
5:8
cards (1)
45:20
care (2)
16:6;17:11
careful (1)
15:25
Carolina (4)
4:8;30:13;99:10;21
carrying (1)
19:3
carryover (1)
53:17
case (21)
18:15;22;24;25;24;1;10;31;25;34:10;36:12;44:16;45:1;58:17;59:15;73:18;86:1;17;89:18;94:2;99:8;106:9
cases (13)
10:24;19:12;15;16;28:23;8;47:23;75:14;78:5;79:12;82:22;83:13;104:4
cash (3)
97:23;99:5;13
cast (1)
95:13
CCR (1)
114:24
celebrated (1)
76:12
center (10)
76:20;25;78:10;80:8;82:18;84:25;93:10;96:7;97:9;100:10
certain (6)
22:9;24;15;18;31:24;72;25;81:19
certainly (6)
32:21;34:2;70:12;84:21;106:17;111:17
certified (1)
114:2
chaired (2)
70:4;107:1
chairs (3)
2:23;27:1;70:3
challenge (3)
52:21;73;22;97:4
challenged (1)
92:18
challenges (1)
96:22
challenging (1)
41:1
chamber (1)
31:15
chambers (1)
21:4
courage (2)
77:21;108:19
change (1)
72:7
changed (1)
45:6
changes (4)
23:14;24:1;48:8;114:12
changing (2)
47:22;51:13
charged (4)
3:9;13;85:12;86:9
checks (1)
89:7
chief (14)
4:7;9;5;10;12;10:3;11;9;15;12:6;13:5;11;48:13;15;17;2:10;12
chilling (2)
75:21;82:25
chooses (1)
88:6
Circuit (2)
44:16;45:5
circulate (2)
50:18;51:3
circumstances (2)
25:7;32:11
circumstances (6)
17:13;24;26:14;

cites (1)
83:23
Citizen (2)
107:22;109:7
Citizens (6)
82:21;83:5;11;106:21;107:13;112:4
Citizen's (1)
10:25
Civil (2)
95:6
claim (1)
31:3
claims (2)
19:11;65:24
clarify (1)
67:19
clause (2)
83:25;84:13
cleaner (1)
102:20
clear (5)
15:24;26;11;39:24;64:11;102:3
clearer (3)
59:7;61;16:21
clearly (6)
64:5;66:21;84:15;86:23;106:19;110:20
clerk (2)
55:19;56:6
Cleveland (1)
4:9
client (2)
33:22;90:18
clients (4)
33:17;23:90;11:17
client's (1)
90:24
climate (1)
51:13
close (2)
65:25;89:3
closely (3)
4:2;48:20;97:9
closer (1)
14:16
closing (2)
104:16;113:7
coalition (1)
95:5
code (17)

Min-U-Script®
Associated Reporters Inc.
(225) 216-2036

(3) broadly - Committee
PUBLIC HEARING

February 03, 2012

American Bar Association

PUBLIC HEARING AMERICAN BAR ASSOCIATIONFebruary 03, 2012

78:24 decades (1) 107:6
December (1) 67:22
decide (1) 25:20
decided (3) 10:1; 93:18; 109:18
decides (1) 32:8
decision (10) 11:3; 45:5; 83:16; 84:6; 7; 86:19; 96:14; 99:6; 106:8; 20
decisions (2) 98:13; 100:15
define (3) 29:1; 35:12; 37:6
defined (5) 36:14; 64:4; 8, 21; 114:4
definitely (2) 88:5; 94:10
definition (3) 58:1; 63:17; 90:5
degree (1) 64:10
Delaware (3) 9:11; 17; 76:8
Delaware's (1) 76:12
delegates (6) 3:14; 6:24; 11; 8; 12:17; 33:9; 96:23
deliberate (1) 35:6
deliberative (1) 12:15
delighted (1) 13:19
demand (1) 45:23
democratic (1) 74:22
democrats (1) 95:18
demonstrated (1) 78:21
denials (1) 10:22
denoted (1) 114:20
denotes (1) 64:10
deny (1) 92:12
depend (1) 24:2
depends (1) 26:13
described (1) 78:17
description (1) 6:19
design (1) 45:24
designed (1) 80:21
detail (1) 77:14
detailed (1) 105:16
details (4) 4:17; 6:16; 57:18; 97:21
deteriorating (1) 100:6
determining (2) 9:4; 84:25

disabilities (1) 12:23; 49:19; 50:15; 21; 54:5; 64:25
Discipline (9) 3:3; 9; 13; 4; 12:20; 29:10; 39:11; 51:20; 107:2
disclose (2) 89:6; 91:20
disclosing (1) 15:111:8
Min-U-Script®
Associated Reporters Inc.
(225) 216-2036

F

face (1)
45:20
Facebook (2)
56:25;57:5
faced (1)
81:4
faces (1)
32:20
facilitate (1)
55:20
fact (5)
17:14;38:4;45:12;
64:6;108:22
factor (2)
24:1;72:24
factors (6)
8:20;16:3;81:19;
102:6;24;103:1
facts (3)
7:17;71:8;109:16
fair (6)
15:21;84:2;91:22,
23:95;4:8
fairly (1)
109:5
faith (1)
100:25
fall (1)
96:22
false (3)
79:15;110:5;13
familiar (3)
42:16;62:24;
109:13
far (5)
4:6;15:18;37:1;
73:8;11
fashion (1)
52:8
favor (2)
25:5;83:9
fear (1)
75:9
feasible (1)
13:4
Federal (1)
114:5
feedback (5)
19:5;17:23;18:20;
65:7
feel (1)
112:2
feeling (1)
44:2;100:18
fell (1)
41:2
felt (1)
102:18
few (2)
30:18;45:3
Fey (1)
70:2
field (3)
15:17;16:5;23:22
fight (1)
111:13
figure (2)
58:1;86:16
figures (1)
96:12
file (9)
20:8;68:19;21:24;
25:69;6:8;11:89:19
filed (1)
22:2
files (4)
20:5;21:5;72:22
filing (2)
69:9;19:16
case (1)
28:15
filtered (1)
34:4
final (4)
20:18;64:23;
86:22;106:11
Finally (2)
99:25;103:22
financing (1)
70:24
financial (15)
35:8;9;9;60:15,17,
18:24;25;61:4;5,9;19;
68:16;21;87:22
financing (1)
71:9
find (9)
5:9;31:1;36:10;
39:19;54:23;89:11;
90:17;105:21;111:24
fine (1)
10:14
finish (1)
93:9
fire (2)
111:13;13
firm (6)
8:6;7,8,12;17;
89:21
firmly (1)
16:17
firms (8)
8:4;33:14;47:21;
23:48:1;78:3;25
firm’s (1)
68:5
first (18)
13:21;17:17;
18:14;27;21;37:24;
39:8;52;25;77:22;
80:18;81:6;82:23;
83:7,23;84:1,11;
97:15;101:4;104:3
Fisher (5)
26:25;27:11;32:1;
42:2;88:23
five (3)
8:25;29;28:23
flag (1)
81:24
flesh (2)
72:22 impartial (4) 84:2,3,95:4,9 impartiality (7) 51:17;72:22; 81:13,21;86:14; 95:13;102:1 impartially (2) 7:20;8:23 implement (1) 3:22 implication (1) 107:12 implications (3) 109:6,111:14; 112:4 import (2) 64:12,13 importance (8) 19:21;32:12; 33:12;64:12;80:19; 81:11,92:10,93:6 important (33) 7:15;12:8;17:2; 23:10;24:1;26:12; 30:24;31:2,6,18; 36:23;43:1;44:13; 45:15;48:3;58:2,19; 74:5;75:1;10:80:2; 81:7;86:14,16,21; 92:15;93:11,16,20, 25:94:2;101:6; 104:19 importantly (1) 77:4 imports (1) 59:1 imposes (1) 39:14 imposing (1) 39:16 impressions (1) 71:1 impropriety (2) 59:15,18 improvident (1) 106:19 inability (1) 65:16 inaudible (25) 3:10;32:22;48:17; 53:2,21;54:15;55:16; 56:5;59:16;66:17; 70:2,5,9;71:17,23; 72:5;73:21;78:20; 82:24;91:7;92:13; 95:1;97:23;108:1; 114:21 include (2) 53:7;108:2 included (3) 11:13;17;4;103:3 including (4) 10:3;4,10,12 instance (1) 107:24 Instead (1) 97:25 institute (3) 8:4;78:13;96:8 instructions (2) 38:20,23 insulate (1) 104:7 integrity (1) 46:7 intend (1) 31:3 intended (5) 30:9;53:3;87:10; 11:8B:16 intent (1) 59:25 interacted (1) 13:6 interaction (1) 114:9 interest (9) 16:7;54:12;72:20; 79:10;20;59;1:10; 95:12;11:11 interested (1) 94:13 interesting (1) 25:23 interests (1) 95:22 interpreted (2) 56:1;7:2 interest (1) 81:18 interrupt (2) 72:14;73:25 into (15) 16:1,11;52:9; 53:11;57:18;62:15; 64:2,13;71:25;74:10; 77:6,14;84:13;87:23; 103:20 introduce (5) 2:8;10;11;3;3;4 involved (13) 11:16;18;22,23; 19:14;21;22;4;10; 32:5;65:15;73:3; 86:2,107:6;110:9; 112:10 involving (3) 7:5;54:6;75:14 Iowa (3) 42:17;56:18; 108:25 issue (23) 19:5;25;4;36:11; 45:7;47:17;48:16; 51:21;52:19;54:22; 55:3;66:3;70:21; 71:3;72:21;73:3; 77:22;80:6;85:9; 87:24;104;19;19; 106:2;110:17 issued (3) 78:14;19,25 issue-oriented (1) 54:13 issues (12) 14:23;16;22; 23:19;23;67:2;17; 71:11;77:15;80:16; 17;82:23,24 J James (1) 30:12 January (1) 38:22 JD (2) 16:14;17:17 job (4) 52:8;95:24; 107:14;112:7 Johnson (1) 76:7 join (1) 49:25 joined (1) 30:12 joint (10) 13:25;15:24;77:4; 80:2;82:7;85:1; 86:22;87:13;88:5; 94:5 Judge (78) 2:19;7:5,11;16,17; 23:8;9,21;11,19,23; 13:21;18;10,11; 19:10;21;22;3,9; 25:1;23;4,25;21;22; 25:16;26;20;28;24; 30:10;12;13,19,18; 33:3;8,40;5,25; 41:3,4,21;42,15; 43:8,44;18;53,21; 54:6,19,21;55,1; 56:17,58:10,62,6,15; 65:17,25;71,24,72; 24;73:16,17,20,20; 74:15;83,20;84,14; 85:7;86,3,8,12; 87,23,89;17,91,19; 92:17,98,121;101,21; 105:11,106,2;6; 110:23;111:7 judges (69) 6:25;7:9,24; 10,24;20,13,12;15; 16,3,13,15,18,17; 11,21,21;24,6; 28:14,39,15;40,25; 42:10,43,19,20; 45,22;51,23;52,15; 54,2,24,58,20; 65,1,12;66,15,17; 68,17,19,23,73,9; 75,5,22,79,12;13,16; 81,13,83;9,85,24; 88,11,90,95;13,16; 23,9,198,122;99,20; 23,100;12,13,16; 101,11,102;15,23; 103,25,104,7,13; 106,7,109,3,8; 110,24,111,3,13 judge's (21) 11,25;14,24; 26,12;30,23,25,31,6; 19,32;12,33,25; 34,5;41,2,55,2; 58,11,62,8,73,13; 86,7;90,25,98,25; 99,6,101;25,105,25 judgment (2) 7:18,107,27 Judicature (7) 50,2;69,19,24; 70,15,18,76,5 judicial (64) 2,21,4,3,20,22; 10,14,11,6;12,22; 14,18,22,15,5,14; 16,8,20,3,25,1,20; 26,23,27,5,14,32,10; 46,23,49,17,19,50,7; 14,21,24,51,6,14,15; 20,21,53,25,63,13; 64,3,16,24,67,1,6; 68,1,69,25,70,25; 71,1,11,12,72,2; 78,18,22,79,1,80,5; 81,2,83,19,85,22; 87,17,89,2,95,11,20; 96,1,9,21,20,17,10, 99,14,100,5,106,22; 107,7,110,14 judiciary (1) 95,9 jump (2) 33,6,34,16 jurisdiction (3) 24,3,29,3,6 jurisdictions (5) 22,6,8,11,46,18; 110,24 Justice (23) 2,13,9,3,10,48,13; 55,8,70,1,15,24,24; 76,21,25,82,19,84,8; 94,21,25,29,98,2; 108,1,11,21,25; 109,14,18,19,22 justices (20) 9,5,13,24,10,3;
| Rebut (3) |模具 (3) | rebuttable (9) |模具 (9) | rebuttal (4) |模具 (4) | receive (2) |17:23|64:9|114:19 | references (2) |模具 (2) | referred (1) |模具 (1) | refers (1) |模具 (1) | refine (2) |模具 (2) | reflecting (1) |模具 (1) | reflects (1) |模具 (1) | reform (5) |模具 (5) | regard (5) |模具 (5) | regulations (4) |模具 (4) | regulating (4) |模具 (4) | regulate (2) |模具 (2) | relates (1) |模具 (1) | relation (1) |模具 (1) | relatively (2) |模具 (2) | relies (2) |模具 (2) | rely (2) |模具 (2) | remark (1) |模具 (1) | remarkable (1) |模具 (1) | markedly (1) |模具 (1) | remarked (1) |模具 (1) | remarks (6) |模具 (6) | removal (1) |模具 (1) | repeatedly (1) |模具 (1) | repeating (1) |模具 (1) | repercussions (1) |模具 (1) | rephrasing (1) |模具 (1) | replaced (2) |模具 (2) | responding (1) |模具 (1) | response (1) |模具 (1) | responsibilities (1) |模具 (1) | responsible (5) |模具 (5) | restrictions (1) |模具 (1) | result (1) |模具 (1) | results (2) |模具 (2) | retain (1) |模具 (1) | retained (1) |模具 (1) | retaining (1) |模具 (1) | rules (33) |模具 (33) | run (7) |模具 (7) | S | badly (1) |模具 (1) | same (13) |模具 (13) | saw (2) |模具 (2) | saying (5) |模具 (5) | schedule (2) |模具 (2) | scheduled (1) |模具 (1) | School (1) |模具 (1) | Sceszinski (16) |模具 (16) | (13) rebut - Sceszinski |模具 (13) | February 03, 2012 |模具 (12) | 0216-2036 |模具 (2036) | Min-U-Script® | Associated Reporters Inc. |模具 (Associated Reporters Inc.) | (225) 216-2036 | (13) rebut - Sceszinski |模具 (13) | February 03, 2012 |模具 (12) | 0216-2036 |模具 (2036) | Min-U-Script® | Associated Reporters Inc. |模具 (Associated Reporters Inc.) | (225) 216-2036
Min-U-Script®
Associated Reporters Inc.
(225) 216-2036

PUBLIC HEARING

February 03, 2012

108:24
swiftly (1)
77:9
switch (1)
49:24
Switching (1)
66:6
sworn (1)
114:7
system (6)
54:11;75:24;
76:13;98:9;101:1;
106:5
systems (1)
52:14

T

table (1)
4:25
Taliveri (1)
38:18
talk (7)
9:435;2:48:5;
56:24;87:6;97:16;
114:12
talked (5)
85:6;17;92:3;
97:25;102:14
talking (2)
63:7;73:5
talks (1)
102:13
target (1)
13:1
task (4)
28:6;36:25;81:4
teaching (2)
17:8,10
technically (1)
65:24
television (2)
46:1;109:20
telling (1)
33:22
ten (3)
48:1;4;93:21
Tennessee (6)
32:7
9:11;2:20:16;
24:12;45:25:5:7;
67:4;10;24:68:2;
75:15;79:18;83:14;
87:16;96:14;100:17;
101:15;106:20;
108:25
ture (12)
58:14;7;31:5;
38:5;39;3:47:20;
56:18;81:14;21;
87:11;16;91:2
turely (1)
86:16
surprise (1)
14:3
survey (11)
98:18;20;99:3,7,
10,14;18:21;100:8;
13,20
surveyed (1)
100:11
surveys (3)
98:6,10;99:2
sustain (1)

57:17;80:11
Tessazini (1)
33:10
test (1)
53:4
testifying (1)
49:22
testimony (6)
5:2;85:19;19:96:2;
103:4;114:7
tests (1)
36:19
thankfully (1)
88:24
theme (2)
7:21;66:16
theory (1)
72:7
Therefore (3)
37:9;13;66:16
thinking (2)
17:18;26:10
third (1)
87:8
though (2)
39:23;65;22
thought (12)
16:1;18;19:24:11;
32:2;39:5;40:17;
53:10;72:12:92:5;
99:5;114:12
thoughtful (1)
17:3
thoughts (3)
6:13;74;9;112:14
thousand (1)
86:5
Three (10)
17:15;28:25;
74:18;21:75;12:86:2;
6:15;93:18;109:2
throughout (2)
30:8;48:19
thrown (1)
57:8
thrust (1)
7:9
thus (1)
15:14
Tim (1)
76:7
timely (1)
15:22
times (3)
28:14;24:32:25
table (1)
13:8
today (23)
3:5;4:18;6;6:11;
10:11;13;15;16;14:2;
15:19;17;16:20;19;
21:16;30;10;38:5;
45:4;47:22;49:23;
75:20;77:3;8:99:2;
96:2;111:21
today’s (1)
88:10
together (2)
48:10;100:20
tone (2)
79:22
tool (1)
20:24
totality (1)
17:12
tough (2)
10:13;12:2
towards (4)
5:15;42:25;69:15;
103:24
track (1)
69:5
tragic (1)
42:17
trail (1)
83:19
train (1)
106:15
transcript (2)
5:4;114:17
transcription (1)
114:14
transparent (1)
15:22
transported (1)
64:2
tremendous (2)
94:6;97:22
tremendously (1)
104:24
trends (1)
99:3
trial (12)
40:25;25;41;3:3,17;
10:12;74:17:84:2;
106:25;107:16;
112:11
tribunal (2)
24:25;84:3
tried (1)
86:19
trigger (3)
73:15;18;75:12
triggered (2)
56:9,12
trouble (1)
14:12
trumped (1)
84:4
try (4)
10:8;35:12;54:23;
64:12