RESOLVED, That the American Bar Association urges the following actions be taken to address any conduct by lawyers making or soliciting campaign contributions to public officials for the purpose of being considered or retained for government legal engagements:

1) All state, territorial and local bar associations should unequivocally condemn any arrangement under which the selection or consideration of lawyers to be retained for government legal engagements depends, in whole or in part, on whether the lawyer has made or solicited campaign contributions.

2) State, territories and local government entities should create, establish and maintain full and effective systems for the reporting and disclosure of campaign contributions to candidates for elective public office so that the public may have reasonable notice of contributions made by lawyers or law firms, and where they have not, bar and disciplinary authorities should adopt rules that require disclosure of campaign contributions by lawyers and law firms to government officials in a position to influence the award of legal engagements to the contributor.

3) Merit procurement processes should be adopted for the selection of lawyers performing legal services for government agencies as a means of ensuring that no political contribution or solicitation has influenced the selection.

4) The Standing Committee on Ethics and Professional Responsibility is directed to report to the House of Delegates by its 1999 Annual Meeting a proposed Model Rule that declares that a lawyer or law firm shall not make a political contribution or solicitation for the purpose of obtaining or being considered for a legal engagement.
BE IT FURTHER RESOLVED, That, where local circumstances warrant, the American Bar Association urges that a rule be considered for adoption that would limit or prevent a lawyer from accepting a legal engagement to perform professional services after making or soliciting a political contribution to a public official for the purpose of being retained, or being considered eligible for retention, by public agencies if the official is involved in selecting the lawyer to be retained.
REPORT

BACKGROUND

The American Bar Association House of Delegates created the Task Force on Lawyers’ Political Contributions to examine lawyers’ political contributions to government officials and to judges and judicial candidates before whom the lawyers may appear. The Task Force’s mandate with regard to the latter issue is:

to determine whether additional professional standards, laws or procedures relating to political campaign contributions are necessary and desirable, including the conduct of lawyers making significant political campaign contributions to judicial candidates before whom the lawyers appear.

The Task Force has met with and consulted persons who have been involved in relevant efforts in several States, and has reviewed legal and political science research on the extent and nature of lawyers’ financial role in judicial campaigns. The Task Force has also reviewed the efforts being made across the country to address problems in the funding and related conduct of judicial elections. Reform initiatives have blossomed in several States in recent years, including Alabama, Kentucky, Michigan, Mississippi, Ohio, Pennsylvania, Texas, and Washington. The Task Force’s Report and the Recommendations contained in it reflect the experience gained to date in those jurisdictions and others.

The Task Force emphasizes our unanimous support for the American Bar Association’s endorsement of merit selection of judges, adopted in 1937 and reaffirmed in many ways since. Our Task Force mandate rests on the recognition that with 42 states having judges at some level stand for election of some type, the necessity for raising campaign funds creates problems. Indeed, we believe the problems we document only add strength to the case for merit selection. But whatever one’s views on how judges should be selected, the problems inherent in funding judicial election campaigns must be addressed. Judicial independence, the integrity of the courts,

1 The Task Force on Lawyers’ Political Contributions produced a final report in two parts. The second part, regarding contributions to judges and judicial candidates, entitled Report and Recommendations of the Task Force on Lawyers’ Political Contributions Part Two (referred to herein as the “Full Report”) is available from the Task Force.

2 Retention-only, non-partisan or partisan.

Of the nation’s 1,243 state appellate judges, 81.9% stand for election of some type and 47.9% face contestable elections: 423 (34%) face retention-only, 174 (14%) face contestable non-partisan elections, and 421 (33.9%) face contestable partisan elections.

Of the nation’s 8,489 state judges in trial courts of general jurisdiction, 86.9% stand for election of some type and 77.3% face contestable elections: 818 (9.6%) face retention-only, 2,891 (34.1%) face contestable non-partisan elections and 3,669 (43.2%) face contestable partisan elections. American Judicature Society, Judicial Selection in the States, 1998; National Center for State Courts, State Court Caseload Statistics, 1996. These data are more fully presented in Attachment A of this Summary and Appendix Two of the Full Report.
and the public's trust in the judicial process and in our profession are all vulnerable to erosion by concerns about the relations between a judge and the attorneys appearing before him or her. Our goal has been to address such concerns -- both matters of appearance and, to the extent they may exist, realities of potential impropriety -- with respect to lawyer participation in judicial campaign financing. We reaffirm that lawyers have a rightful and important role in judicial elections. The Task Force's Recommendations are designed to fortify the lawyer's role and the public's appreciation of it.

Accordingly, the Task Force recommends several steps for immediate implementation in the States in which judges stand for election of some type. Additionally, the Task Force suggests several other steps, closely related to the mandate of the Task Force, which merit consideration by those States. These recommendations and suggestions are embodied in the Resolution which accompanies this Summary and appears as Appendix One of the Full Report.

The Context for Lawyers' Contributions to Judicial Elections

Any aspect of judicial elections begins with one over-riding fact: these elections are uniquely different from all other elections. But to appreciate the uniqueness of judicial elections, we must first note the differences between judges and other elective officials.

Executive and legislative officials are elected in all democracies, but the United States is all but unique in having judges stand for election. These judicial elections are of three types:

**Retention Elections** The elections that are most different from ordinary elections are "retention" elections, in which sitting judges are on the ballot seeking "yes" votes for another term, but there is no direct opponent. Twenty states have such elections.3 Despite the lack of an opponent, on occasion such elections are hotly contested. The most expensive and probably most controversial judicial election ever was California's in 1986, when Chief Justice Rose Bird and two of her colleagues were denied retention. A Wyoming Justice was denied retention in 1992 and Nebraska and Tennessee Justices in 1996. In Florida in 1990 and 1992, the Chief Justice and another Justice won retention despite active efforts against them, fueled by their votes in particular cases. And this year in California, the retention of the Chief Justice and an Associate Justice is drawing opposition substantial enough that the Chief Justice has said he "had hired political advisors and had started raising campaign funds to 'avoid being blind-sided.'"

That recent experience with retention elections in States as diverse as Wyoming and Florida, Nebraska, California and Tennessee, calls for a special note. That experience makes clear how necessary and proper it is for lawyers to participate appropriately in judicial elections. Three generations of efforts by lawyers for merit selection have succeeded in almost 20 States, almost all with retention elections. (Retention elections are different from even other judicial elections in ways that warrant differences in how they are handled, as we specify below in §§ II and III.)

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3 See Full Report for footnotes.
The Bar has a special obligation to make those elections fulfill their goal: the balanced pursuit of both judicial independence and judicial accountability. Never is there more potential for judicial accountability being distorted and judicial independence being jeopardized than when a judge is campaigned against because of a stand on a single issue or even in a single case. In such a situation, it is particularly important for lawyers to support the judicial process and the rule of law. Below, when we examine lawyers’ campaign contributions (§ II), we expand on the value of the lawyers’ role in judicial elections. Our Task Force recommendations all aim at strengthening that role, the judicial independence it supports, and the public understanding of both.

**Non-Partisan Elections** Non-partisan, contestable elections are conducted in 17 states.

**Partisan Elections** Partisan, contestable elections are conducted in 14 states.

Some States fall into more than one category: e.g., California and New York have retention elections for appellate judges, but California trial judges face nonpartisan contestable elections, and New York trial judges face partisan contestable elections.

In sum, in 42 States, judges at some level stand for election of some type.

The six major differences between judicial elections and other elections, which render them what may be called “quasi-elections”, are 1) restraints on campaign conduct, 2) special types of elections, 3) ballot placement, 4) lack of voter awareness, 5) the special role of attorneys, and one more -- 6) the special role of name familiarity: Whatever one’s view of the value of famous names in politics, in judicial elections name-familiarity is more important than ever. (In a sense, this is not a separate, sixth difference from other kinds of elections, but rather a result that flows from the other differences.) Examples are striking:

In Washington State in 1990, the highly regarded Chief Justice Callow was defeated by an unknown Tacoma lawyer who won 53% of the vote though he didn’t campaign (he spent $500), but who had the same name as Tacoma’s TV anchorman, well-known statewide. In the Dallas area, only one Democratic judge has survived the rising Republican tide, and though he is able and well-regarded, he enjoys the same name as the leading local disk jockey. In San Antonio in 1990, a well-regarded judge was defeated for a Supreme Court nomination by a lawyer new to the area, a recent retiree from the Army, but whose name was Gene Kelly. And this year in North Carolina, a primary election cost one of the State’s most respected appellate judges his seat. The trial judge who defeated him had twice been censured by the Supreme Court for improper conduct, but had the same name as a recent former governor and used campaign signs that looked like that Governor’s. Similar examples abound. [See Full Report at pp. 11-13.]

When we turn to aspects of judicial campaigns, such as lawyers’ contributions to the candidates and the candidates’ fund-raising generally, the differences noted above show we must keep in mind how great is the difficulty judicial candidates face in aiding voters to cast meaningful votes.
Changes in Judicial Elections

“In the past, judicial elections were low-key affairs, conducted with civility and dignity. As a result, they were relatively inexpensive. However, that is no longer the case. Today, in many jurisdictions, judicial elections have taken on all of the trappings of partisan politics, significantly increasing the resulting cost.”

There is a widespread misperception that Texas is the main arena for judicial campaign finance problems, or at least that such problems rarely arise in States that have non-partisan or retention-only elections. But consider:

First, examples of notable spending in retention-only elections:

1) California had the most expensive judicial campaign ever, in 1986 when $10,700,000 was spent and three Justices were denied retention. The Justices had raised $4,100,000, including some large contributions from lawyers and lawyer-affiliated groups; almost all of the opposition’s $6,600,000 were small, grass-roots contributions.

Unprecedented as was 1986, it was not the first time for costly retention elections in California: 1978, total spending for and against one Justice: $643,000; and 1982, total spending for and against the same Justice: $870,000.

2) Florida’s Justices have won retention but faced such opposition that in 1984 two Justices spent about $300,000, in 1990 one spent $300,000 and in 1992, one spent $400,000.

3) Nebraska in 1996 denied retention to a Justice. The Justice had raised $80,000, the opposition was an organized group that spent an estimated $200,000.

Next, notable examples of spending in non-partisan elections:

1) Los Angeles Superior Court campaigns’ median spending in 1976 was $3,177. In 1994, the median spending was $70,000.

2) Kentucky’s Supreme Court spending for one seat in 1978 was $52,000. In 1996, the average spending for two seats was $412,362.

3) Montana’s Supreme Court spending in 1980 was $59,000 but $247,000 in 1986. In 1984 the average was $53,647 for a contested seat, but in 1996 that average was $138,460.

4) Washington’s Supreme Court spending in 1970 averaged $17,500, but in 1995 each winner spent about $150,000.
5) Wisconsin— which is unique with its public funds for judicial candidates— in 1979 had average Supreme Court spending of $51,000, but in 1997 the average was $449,537.

We submit that the need for reform could not be clearer nor more urgent, given the value we place on public confidence in the courts, on judges' independence and integrity, and on making the bench attractive to the kinds of people we need as judges.

When the California Judges Association in 1983 sent its members a questionnaire about their campaign experience, one judge's reply included this:

I would solicit and expect more help from local attorneys next time. Because of the ethical problems I avoided the whole issue. If the Bar wants competent judges (and in my case the issue was clear) it must get down in the dirt with us.

Another judge wrote this:

The best lawyers are not applying for judgeships because of lack of faith in the appointment process and they do not want to engage in political campaigns in order to gain re-election.

For such reasons, the American Bar Association must take steps to make judicial elections much more what they should be. Our recommendations are designed to accomplish that goal, with flexibility so as to be tailored appropriately for each jurisdiction's circumstances.

State Supreme Courts, and in some States lawyer disciplinary authorities, can regulate the behavior of judges and judicial candidates as they cannot that of other government officials and candidates. In doing so, the courts and disciplinary authorities have often heeded the ABA's statements of proper conduct for judges and judicial candidates, as found in the Model Code of Judicial Conduct. Hence, the ABA can appropriately propose rules for judges and candidates who receive judicial campaign contributions as well as for lawyers who contribute. This permits ways of addressing problems posed by campaign contributions in judicial elections that are not open to the ABA or the Task Force in considering contributions to candidates for other government posts.

TASK FORCE RECOMMENDATIONS

I. **Canon 5 of the Model Code of Judicial Conduct Should be Amended With Regard to Disclosure Requirements** [See Resolution and Full Report at pp. 19-23.]

The Task Force recommends that the Resolution be implemented along the following lines:

1) Consistent with existing law, disclosure requirements shall apply to all contributors to a
judicial campaign. Appropriate bodies should review the sufficiency of existing provisions (and their implementation).

2) Judicial candidates’ campaign committees should take two additional steps:

a) Judges’ and judicial candidates’ campaign committees should file their campaign finance disclosure reports not only with the official repository agency, but also with the clerk of the court to which the candidate is seeking (or has just sought) election. This will assure public access to the information.

b) The special position of lawyers warrants especially full disclosure of their contributions. The fuller disclosure will be unburdensome in jurisdictions that have (or in the many that are about to have) electronic filing of campaign finance reports. We recommend fuller disclosure through electronic filing. If electronic filing is not available in the near future, we recommend fuller disclosure even in the absence of electronic filing.

c) That fuller disclosure should cover:

(1) All “lawyer-contributors”, which shall include any contributor who is (A) a lawyer or lawyer’s spouse or minor child resident with the lawyer, (B) a law firm, (C) an employee of a lawyer or a law firm, or (D) a political action committee sponsored by a law firm.

(2) Every contribution (above a de minimus level of $ ) from a lawyer-contributor shall be identified by full name, and firm or employer. In addition, every lawyer-contributor who is also a member of the candidate’s campaign committee shall so indicate.

(3) The judicial candidates’ committees shall make best efforts to collect the required information. The jurisdiction should monitor the level of compliance in reporting identifying information on contributors. If the compliance level proves unsatisfactory, the jurisdiction should consider requiring that candidates’ committees return contributions from any contributor who is not fully identified.

(4) Judicial candidates’ committees shall, in (or in addition to) their official filings, indicate separately (A) the total sum received from lawyer-contributors, (B) the name, address, and contribution of each lawyer-contributor who contributed more than $ , and (C) the amount received, directly or indirectly, from each law firm that contributed more than $ (whether from the firm, its members and employees, or its political action committee).

3) Any political party, political action committee, other political committee, or other entity which either contributes more than $[say, $1,000] to or makes expenditures of more than $[say, $1,000] in connection with a judicial campaign (other than expenditures by a political party for generic voter registration or get-out-the-vote efforts, or for generic advertising about the party and its positions, or for lists of candidates that include a majority who are not judicial candidates), shall

a) report the same additional information as specified in 2)c) above in its campaign finance disclosure reports. If the entity is not otherwise required to file campaign finance reports, it shall file such reports with the jurisdiction’s official body responsible for lawyer discipline, on the same time schedule as is required for
candidates and entities that are required to report; and

b) file their campaign finance reports not only with the official repository agency but also with the clerk of the court to which the judicial candidate is seeking (or has just sought) election.

4) The official repository of campaign finance reports shall aggregate the contributions of each lawyer-contributor to each candidate and to each party or other entity and report the total contributions from all lawyer-contributors to each; and shall report, for each lawyer-contributor whose aggregate contributions (and/or fund-raising) amount to more than $[______], the aggregate sum contributed and/or raised.

II. Canon 5 of the Model Code of Judicial Conduct Should be Amended With Regard to Contribution Limits [See Resolution and Full Report at pp. 23-34.]

If in fact very large proportions of the public believe that judicial decisions are affected by campaign contributions, that alone requires action. We must preserve the public confidence that is crucial to sustain the courts, "the least dangerous branch," which lacks the other branches' powers of purse and sword, and which enjoys none of the constant bonding with constituents that characterizes officials in the other branches.

Unfortunately but not surprisingly, recent polls demonstrate that campaign contributions to judges are seriously eroding public confidence in the courts:

1) "Nine out of ten Ohioans believe judicial decisions are influenced by contributions to political campaigns."

2) "[Pennsylvania] [v]oters are firmly convinced that large campaign contributions lead to special treatment, including from judges. They believe contributors expect -- and receive -- something in return for their largesse, even in the courtroom . . . ."

3) A 1987 Texas poll found strong support for changing the system of selecting judges, "driven mostly by two negative perceptions of the present system . . . . Election costs are out of hand, threatening the independence of judges from special interest campaign contributions . . . . Voters are ill-informed about judicial candidates . . . .".

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5 The Pennsylvania poll asked "How frequently do you think the decisions made by judges in their courtrooms are influenced by large contributions made to their election campaigns, always, most of the time, some of the time, or never?"

The answers, divided into four geographic regions: "always/most of the time" ranged from a high of 46% in North/NE to a low of 31% in Metro Philadelphia and Central.
4) A 1997 Arizona poll found 84% expressing "Total Disagree[ment]" with this statement: "It is appropriate for judges to accept campaign contributions from persons and corporations who may later be litigants in court."


We know enough -- from such polls, from scholarly and popular articles, and from consultation with judges, lawyers, and lay persons -- that we say this confidently: the problems encountered in jurisdictions with judicial elections are so similar (especially when it comes to campaigns that are state-wide or in large urban areas) and are so acute as not merely to justify remedial steps, but to demand them.

The problem will not be remedied by addressing only contributions from lawyers for three reasons [See Full Report at p. 27].

We recommend that Canon 5 of the ABA Model Code of Judicial Conduct be amended to add the following:

"C(4) A judge's or a candidate's committee may not accept from any contributor a contribution which aggregates (including direct and any indirect contributions, but in retention elections including only all direct contributions*):

1) more than $______ if from an individual; or

2* The different treatment of retention elections is explained in n. 9 below.

We stress that the precise figure for the contribution limit must be determined in light of each State's particular circumstances. The figure should reflect several variables, such as: (a) What does the particular jurisdiction's recent experience show are typical levels of contributions for the judgeship in question? (b) What are the typical levels of expenditure in those campaigns, including campaigns for open seats and in competitive elections? (c) What amount of expenditures would allow a candidate in that jurisdiction to communicate effectively to the electorate, even in a large field of candidates and with many other offices up for election?

We stress also this: the level of contribution limits must be set with full awareness of three almost certain consequences, however unintentional, of such limits: (1) the lower the limits, the higher the status of individuals who raise funds; (2) the lower the limits, the greater the incentive for either independent spending (which is constitutionally protected), or indirect support by political parties or other groups; (3) the lower the limits, the greater the likelihood that more wealthy, self-funding, candidates will win or at least challenge less wealthy candidates. Note also that some limits have been found so low as to interfere with First Amendment rights, see e.g. *Carver v. Nixon*, 72 F3d 633 (8th Cir. 1995), c.d. 518 U.S. 1033 (1996)(striking statewide limits of $300, and lower limits for races in smaller constituencies); *Vannatta v. Kesting*, 931 P2d 770 (Ore. S.Ct. 1996Xstriking $500 limits on statewide candidates including Supreme Court, Court of Appeals or Tax Court, and $100 limit for state legislators).

A fourth consequence of contribution limits is well recognized, but to date has not been reflected in law in any jurisdiction: the lower the limits, the harder it is likely to be for challengers who lack ready access to large networks of support: women and minority candidates often have less access than others. There is anecdotal evidence that such candidates often rely on a relatively smaller number of relatively larger contributors to gain sufficient visibility.
In addition to the contribution ceilings that have been adopted by several States (see below), we urge consideration of the ceilings that have been proposed by notable special commissions. E.g., for Ohio in 1995, these aggregate limits per election cycle were proposed: For the Supreme Court, $1,000 for individuals' contributions; $5,000 for organizations such as PACs and political organizations other than state, county or national parties; and $90,000 for contributions from the state, county and national political parties. For lower courts, $250 for individuals, $2,500 for organizations, and for parties, a formula with $0.50 per voter. (Report, n. 33 above, at 10.) For Washington State in 1996, these limits were proposed: individual other than the candidate, $250 - $1,000 "depending on court level"; organizations, $2,500 - $5,000; court appointees, $250 regardless of court level. (Report, n. 39 above, at 45.) For Pennsylvania in 1998, the proposed limits for statewide races were $10,000 per individual and $5,000 per legal entity, and for common pleas campaigns, $500 per individual and $2,500 per legal entity. (Report, n. 42 above, at 15.) Last, although not an official commission, in 1993 Texas's League of Women Voters, Common Cause, Public Citizen and Consumer Rights Action League jointly introduced a Fair Campaign Pledge for 1994's judicial races, and succeeded in getting 70% of the candidates ($87 of 126) in 23 contested races to sign that pledge. The pertinence for us is that the groups' pledge set these limits on contributions: $5,000 for individuals and $25,000 for aggregate contributions for law firms. Austin American-Statesman (Feb. 2, 1994), 38. Compare Texas's statute, below.

At present, a number of States have generally applicable contribution limits, and seven States have contribution limits specifically on judicial campaigns: Alaska, Idaho, Kansas, Missouri, Ohio, Texas, and Wisconsin (limits apply separately to any primary and general elections; also, there may be different limits for contributors other than individuals)

Alaska, which has only retention elections: individuals, $500; non-party groups, $1,000; parties, $5,000. All limits are per year. ASK STAT. §15.13.070. Idaho: For judicial districts, $1,000; for candidates for all statewide offices, $5,000. IDA. CODE §§67-6610A(1) and 67-6615(5). Kansas, which has both retention elections and, for many trial judges, partisan elections: for supreme court — individuals and parties, $2,000 per election; for district judges — individuals and parties, $500 per election. KAN. STAT. ANN. §§25-4153. Missouri, which has both retention elections and, for many trial judges, partisan elections: individuals, from $1,000 to $250 per election depending on the district's population, and parties, 10 times those limits. §253.155(a) and (c). Ohio, which has both retention elections and, for many trial judges, partisan elections: for supreme court — individuals and parties, $2,000 per election; for district judges — individuals and parties, $500 per election; for magistrate judges and judges of the court of common pleas, $250 per election. OH. REV. CODE ANN. §§67-6610A(1) and (c). Pennsylvania, which has both retention elections and, for many trial judges, partisan elections: individuals, $250 - $1,000 per election depending on the district's population, and parties, 10 times those limits. MO. ANN. STAT. §130.032. For Ohio's current ceilings, see Appendix Four (if the primary is not contested, general election limits apply throughout permissive fundraising period.) Note that Ohio's court rule setting earlier spending ceilings was invalidated in Suster v. Marshall, 951 F. Supp. 693 (N.D. Ohio 1996), and is now on appeal before the Sixth Circuit Court of Appeals, Case No. 97-3174. Texas: $5,000 for statewide judicial offices and for courts in judicial districts with population above one million; $2,500 for districts of 250,000 - 1,000,000, and $1,000 for smaller districts. Law firms are under an aggregate limit of six times those figures, e.g., §30,000 for statewide races. TEX. ELEC. CODE ANN. §§253.155(a) and (c). Wisconsin (for primary and general whether or not the primary is contested): $10,000 for Supreme Court; $3,000 for other appellate courts in districts with population over 500,000 and for trial courts in circuits with population over 500,000; $2,500 for other appellate courts and $1,000 for other trial courts. WIS. STAT. ANN. §11.106(1)(b). (Supp. 1997)

Two more States have had special contribution limits on judicial candidates. Florida, until 1991, limited contributions to any candidate for retention as Supreme Court justice to $3,000; to candidates for retention as court of appeals judge, $2,000; and to candidates for county or circuit court, $1,000. Florida law now imposes a simple $500 limit on all candidates, nonjudicial and judicial. However, there is no limit on how much individuals can contribute to parties, and parties can contribute up to $50,000 to candidates. Moreover, that $50,000 limit does not apply to "polling services, research services, costs for campaign staff, professional consulting services, and telephne calls." FLA. STAT. ANN. §106.08. Oregon's $500 limit on all statewide candidates, including Supreme Court, Court of Appeals, and Tax Court, in 1996 was struck down as unconstitutionally low, see above.

A last variable is important: For courts of special jurisdiction, like probate courts, there are differences that may
more than $____ if from a law firm, including its lawyers, employees and any firm-sponsored political action committee; or

(3) more than $____ if from a political party (with all committees of a single party constituting a single entity); or

(4) more than $____ if from a political action committee; or

(5) [in a jurisdiction that allows corporations or unions to make contributions or expenditures in connection with elections] if from a labor organization or a corporation, more than $____

(a) “Contribution” has the same meaning as in [the jurisdiction’s statute on campaign finance regulation and/or disclosure].

(b) “aggregates (including direct and any indirect contributions)” means:

(i) in the case of an individual contributor or a law firm [or corporation or labor organization], the aggregate of that contributor’s contributions to: the candidate and/or candidate’s campaign committee, and to a political party or political action committee or group with the understanding (as demonstrated by objective circumstances) that that party or committee or group will use that contribution for a contribution to or expenditure in support of that same candidate or in opposition to that candidate’s opponent. However, in the special case of a judge in a retention election, only contributions made directly to the judge shall be included in the aggregate.9

Footnote continued

9 If there is no per-firm limit, then the limits on contributions from individuals have a far greater impact on small firms than on large ones.

However, we recognize that flexibility is needed to set fair limits on aggregate contributions from firms. If too low a per-firm limit is set (e.g., for all firms regardless of size, five times the limit on an individual’s contributions), then members and employees of large firms may be barred from appropriate political participation. On the other hand, if the per-firm limit is too high, it will be viewed as only a facade.

We find that there are two different reasonable approaches to the per-firm limit. With one approach, a single figure (say, a multiple of ten times the individual’s contribution limit) is set for each firm, regardless of firm size. So long as that figure strikes a reasonable balance between small and large firms, there is great value in this approach’s advantage of simplicity in application; actually, the fluidity of law firm life means that it is often difficult to say, for a precise date, just how many members and employees are in a firm. With the other approach, a “stair-step” scale provides two (or several) levels for the per-firm aggregate limit. E.g., a firm of fewer than 15 partners could give, say, up to a total five times as much as a single individual; a firm of 16-50 could give, say, up to 10 times as much as a single individual; and a firm of more than 50 could give, say, up to 20 times as much as a single individual.

Assuming that some per-firm limit is set, we believe it is essential to recognize the sufficiency of good-faith compliance, since absolute liability does not fit in campaign finance regulation. E.g.: “A firm will not violate the applicable contribution limit if a finding is made that the firm had developed and instituted written procedures reasonably designed to ensure compliance with this Rule and contributors at the firm reasonably believed that they were complying with the applicable contribution limit.”

9 In ordinary, contestable elections, it is necessary to include both direct and indirect contributions to a candidate; otherwise, there is no stopping supporters from contributing within the limit to the candidate, then contributing more to a political action committee or party that will support the candidate.
(ii) in the case of a political party or political action committee, the aggregate of the party's or committee's contributions to the candidate or candidate's campaign committee, or expenditures made in support of that candidate or in opposition to that candidate's opponent.

Provided however that the limit on contributions from such entities shall not include:

(A) expenditures made in support of that candidate or in opposition to that candidate's opponent which are not coordinated with the candidate and on which the entity has filed with [the appropriate agency] an affidavit affirming that the expenditure was made without consultation with the candidate or the candidate's campaign committee and without use of any information shared with the candidate or the candidate's campaign committee.

(B) expenditures made by a political party for generic voter registration or get-out-the-vote efforts, or for generic advertising about the party and its positions, or for lists of candidates that include a majority who are not judicial candidates.

III. Canon 5 of the Model Code of Judicial Conduct Should be Amended With Regard to Recusal [See Resolution and Full Report at pp. 34-44.]

To implement the Resolution to establish a recusal system for unduly large campaign contributions, we recommend that seven issues be addressed [set forth more fully in the Full Report, pp. 38-44]: 1) the contribution level that triggers recusal; 2) the party moving for recusal; 3) contributions covered by the provision; 4) factual basis for recusal; 5) procedural aspects of recusal motion; 6) automatic recusal; and 7) duration of recusal rule.

Footnote continued

However, in retention elections, there is a difference that requires different treatment. Opponents of the judge up for retention are likely to be an ad hoc group engaged in "independent spending", i.e., direct advocacy which is not coordinated with any candidate — indeed, it could not be coordinated, because those opponents have no candidate to support. "Independent spending" is protected from campaign finance regulation other than disclosure, by clear holdings of Buckley v. Valeo, 424 U.S. 1 (1976) and other lower court decisions before as well as since. (Independent spending may be engaged in by a political action committee, FEC v. Nat'l Conservative Political Action Committee, 470 U.S. 480 (1985) or by a party, Colorado Republican Federal Campaign Committee v. FEC, 518 U.S. 604 (1996). However, contributions to PACs and parties are limited even if used for independent spending.)

Under the current law, there may be limits on contributions to candidates, parties, and political action committees — but not on contributions to independent spenders who support or oppose candidates. In ordinary elections, while that may create various problems, it is not inherently unfair. But it would be clearly unfair in a retention election if one side (the judge's supporters) were subject to contribution limits while the other side (the opponents) were not. By keeping a limit on direct contributions to the judge seeking retention, we adhere to the values that such limits reflect, including preservation of the distance between the supporters and the judge. But it would distort those values to render a judge seeking retention vulnerable to unlimited spending by opponents. Therefore, the judge's supporters should be just as free as the judge's opponents to engage in independent, i.e., uncoordinated, spending.

V. Several Related Steps Should Be Considered to Reduce Judicial Candidates' Need to Raise Funds and to Encourage Compliance with Campaign Regulation [See Resolution and Full Report at pp. 47-58.]

(A) The Task Force recommends that States which have not adopted Canon 5's provisions limiting the period during which judicial campaigns may solicit contributions, should do so.

(B) Canon 5 of the Model Code of Judicial Conduct Should be Amended With Regard to the Retention and Use of Surplus Campaign Funds

(C) Bar Associations, Other Citizen Organizations And Law-Makers Should Consider Voter Guides, Judicial Campaign Oversight Committees and Improved Judicial Campaign Finance Data Collection and Publication

CONCLUSION

Public confidence in the integrity of the judiciary and the bar is essential to the administration of justice in the United States. The status quo in judicial campaign finance has already eroded that public confidence in several jurisdictions and puts it at too great a risk in all 42 States where judges stand for election. The Task Force's recommendations are designed to fortify the public's confidence in the elective judiciary and in the important role of lawyers in judicial elections. The principal means the Task Force recommends for achieving these goals are those traditionally chosen by the ABA: additions and amendments to model rules that may be adopted by the jurisdictions according to their particular circumstances. It is our hope that these recommendations and our Report will prove useful to the ABA and to the States, bar associations and citizen groups working at improvement of this vital electoral process.

August, 1998
1. Purpose and Intent

This Rule is intended to maintain high standards of integrity in the legal profession and among public officials by preventing lawyers from seeking government legal engagements through political contributions to public officials while respecting the rights of lawyers to participate in the political process and the importance of that participation.

2. Disqualification from Undertaking a Government Legal Engagement

(a) No Lawyer or Law Firm shall undertake a Government Legal Engagement on behalf of a Government Entity within two years after making a Political Contribution or Solicitation for the purpose of being retained or being considered eligible for retention to perform or seek to perform any Government Legal Engagement for or on behalf of such Entity.

(b) No Law Firm shall undertake a Government Legal Engagement for or on behalf of a Government Entity within two years after a Lawyer associated with the Law Firm has made a Political Contribution or Solicitation for the purpose of being retained or being considered eligible for retention to perform a Governmental Legal Engagement for such Entity, unless the following conditions are met:

(i) prior to the time the Political Contribution or Solicitation was made, the Law Firm had developed and instituted written procedures reasonably designed to ensure compliance with this Rule;

(ii) at the time the Political Contribution or Solicitation was made, the Law Firm’s management

(A) had no actual knowledge of the Political Contribution or Solicitation or,

(B) had reason to believe that the Political Contribution or Solicitation complied with the provisions of this rule;

(iii) the Law Firm has taken reasonable steps to cause the return of that Political Contribution, or of Political Contributions resulting from that Political Solicitation.

(c) This Rule shall not apply to a Government Legal Engagement for which the Lawyer or Law Firm has been selected pursuant to a Request For Proposal (“RFP”) process in which there was no participation, direct or indirect, by the Official of a Government Entity on whose behalf the Political Contribution or Solicitation was made, other than actions that give effect to decisions made by others.
(d) A Political Contribution that exceeds [$500 or other appropriate figure] or Solicitation that results in Political Contributions that exceed, in the aggregate, [$3,000 or other appropriate figure] by a Lawyer or Law Firm for an Official of a Governmental Entity within two years proceeding the Lawyer or Law Firm’s selection to perform a Government Legal Engagement for such entity shall be deemed to have been made for the purpose of being retained or considered for retention to perform the Government Legal Engagement unless it is shown by the Lawyer or Law Firm that:

(i) The Political Contribution or Solicitation was made because of a prior personal, family or non-client professional relationship with the Official, or

(ii) The Political Contribution or Solicitation was made for other reasons sufficient to establish a purpose other than that of being retained or considered for retention to perform a Government Legal Engagement.¹

For purposes of this rule, (i) the limits with respect to Lawyer contributions shall aggregate contributions of the Lawyer and contributions of minor children resident with the Lawyer, and (ii) a Political Contribution or Solicitation by a Law Firm shall refer only to contributions or solicitations by the Law Firm and shall not consist of aggregate contributions made by Lawyers associated with the Law Firm.²

3. Disclosure of Political Contributions and Solicitations

(a) A Lawyer who during any calendar year, has performed, or is associated with a Law Firm which has performed, a Government Legal Engagement shall file a report¹ within 30 days of year-end disclosing any Political Contribution or Solicitation made within the last two calendar years for an Official of the Government Entity for which or on whose behalf the Lawyer or Law Firm has performed a Government Legal Engagement.

(b) The report shall identify any Official of a Government Entity receiving a contribution, the amount of the Political Contribution made by such Lawyer (including Political Contributions or Solicitations made by the Lawyer’s spouse and

¹ Such a proper purpose might be demonstrated, for example, by showing that the contribution was part of a broader pattern of contributions promoting women and minority candidates for political office, or advancing another cause to which the contributor adheres.

² The dollar amounts set forth in Section 2 of this rule are meant as a guide in determining the level of political contributions that do not, of themselves, compel an inference of impropriety. However, the Task Force has concluded that the precise dollar amount must take into account local conditions in the different jurisdictions that may adopt this rule. What is deemed appropriate in a densely populated state like New York may be inappropriate in a sparsely populated Western state. In addition, the adopting jurisdiction may find it appropriate to differentiate in the dollar amounts among different types of elective offices within that jurisdiction. For example, while $500 might be an appropriate contribution limitation in a gubernatorial election, a lower amount may be an appropriate contribution limitation for a local election.

³ A state or territory whose legislation already provides for reporting and disclosure of the information covered by this Part 3 need not adopt this section.
minor children resident with the Lawyer) or Law Firm, and the aggregate amount of all Political Contributions resulting from the Political Solicitation on behalf of such Official of a Government Entity made by such Lawyer or Law Firm, if known. It shall also identify any Government Legal Engagement that the Lawyer or Law Firm has participated in during the year in question, indicating the Government Entity in question.

(c) The report shall be filed in such repositories as may be required by law, or regulation or rule of the bar association or court having disciplinary authority over the Lawyer and shall be available to the public at each such repository and in the main office of the Lawyer and any Law Firm with which the Lawyer is associated.

(d) If the Lawyer is associated with a Law Firm, the report may be filed by the Law Firm on behalf of all persons associated with the firm required to file a report.

(e) If a Lawyer or Law Firm substantially fails, without reasonable grounds of excuse, to comply with this paragraph 3, that Lawyer (and any Law Firm with which the Lawyer is associated) or Law Firm may not, within two years after that failure, perform any Government Legal Engagement for a Government Entity of which the beneficiary of the violative Political Contribution or Political Solicitation is an Official, or for which the unreported Government Legal Engagement was performed.

4. Sanctions

A Lawyer or Law Firm which violates or causes a violation of any provision of this Rule shall be subject to professional discipline.

5. Definitions

"Government Legal Engagement" shall mean any legal engagement for compensation on behalf of a Government Entity or on behalf of an entity dealing with a Government Entity when an Official has specified or recommended counsel for the entity, but shall not include any legal engagement of a lawyer who is an employee of the engaging client.

"Government Entity" shall mean any agency or instrumentality of this state [or territory], or any political subdivision thereof, including any public or not-for-profit entity controlled by or affiliated with such agency or instrumentality.

"Official" shall include any person who was, at the time of the Political Contribution or Solicitation, an incumbent in an elective office, or a candidate for election to such an office (including any election committee for such person) which office is directly or indirectly responsible under any provision of law, including, without limitation by means of the power to appoint some or all of the members of the Government Entity, or otherwise, for the retention of a Lawyer to perform a Government Legal Engagement.

* A suggested reporting form is attached at the end of this proposed rule.
“Lawyer” shall mean any Lawyer admitted to the bar of any state, or territory of the United States or the District of Columbia or any political subdivision thereof, and shall include minor children resident with the Lawyer.

“Lawyer Associated with a Law Firm” shall mean any Lawyer who is a partner, shareholder, employee or counsel of a Law Firm.

“Law Firm” shall mean any partnership or professional corporation or other entity engaged in the practice of law and shall include any political action committee or other entity controlled by the Law Firm.

“Political Contribution” shall mean any gift, subscription, loan, advance, or deposit of money or anything of value other than the lawyer’s uncompensated services, made, directly or indirectly, to an Official: (i) for the purpose of influencing any election for state or local office; (ii) for payment of debt incurred in connection with such an election; or (iii) for transition or inaugural expenses incurred by a successful candidate for state or local office.

“Political Solicitation” shall mean a solicitation directed to any person or entity for a Political Contribution to an Official.
You must file this form within thirty days of the end of any year in which you or any law firm with which you are associated performed any Government Legal Engagement. Such an engagement includes any legal engagement on behalf of any Government Entity, which is defined as any agency or instrumentality of this state or of any of its political subdivisions (including any public or nonprofit entity controlled by or affiliated with such an agency or instrumentality). A Government Legal Engagement also includes any legal engagement for compensation on behalf of an entity dealing with such a Government Entity when a government official has specified counsel for the entity. It does not, however, include any legal engagement of a lawyer who is an employee of the engaging client. Please note that a lawyer not admitted to practice in this state must file a report if that lawyer or the lawyer’s firm performed a Government Legal Engagement.

If you are required to file this form, you may do so yourself, or a law firm with which you are associated may file a report on behalf of all persons associated with the firm who are required to file a report. In either case, all the following questions must be answered, and the form filed at the following address: [state bar authorities should insert address of filing office]. Also, a copy of the form must be available for public inspection at your main office in this state and of any firm with which you are associated.

1. State your name, business address, and any firm affiliation.

   Name: ________________________________
   Business Address: ________________________________
   Firm Affiliation (if any): ________________________________

2. Please list the amount and recipient of any Political Contribution you or any law firm with which you are associated made during the year for which you are reporting or the previous year to any official of a Government Entity. List also any Political Contribution made by your spouse or by a minor child resident with you. If the space provided below is inadequate, please continue on a separate sheet.

<table>
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<tr>
<th>Amount of Contribution</th>
<th>Name of Contributor</th>
<th>Name of Recipient</th>
<th>Date of Contribution</th>
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3. If you or any law firm with which you are associated solicited during the last two years any Political Contributions to any official of a Government Entity, please state the aggregate amount of the Political Contributions resulting from each such solicitation and the recipient of those Political Contributions.

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<th>Amount of Contributions</th>
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4. Please list any Government Legal Engagement in which you or any law firm with which you are associated participated during the year for which you are reporting, stating the Government Entity for which the engagement was performed.

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<th>Government Legal Engagement</th>
<th>Government Entity</th>
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"Political Contribution" shall include any gift, subscription, loan, advance, or deposit of money or anything of value other than your uncompensated services made, directly or indirectly, to an Official: (i) for the purpose of influencing any election for state or local office; (ii) for payment of debt incurred in connection with such an election; or (iii) for transition or inaugural expenses incurred by a successful candidate for state or local office.

"Official" shall include any person who was, at the time of the Political Contribution or Solicitation, an incumbent in an elective office, or a candidate for election to such an office (including any election committee for such person) which office is directly or indirectly responsible under any provision of law, including, without limitation by means of the power to appoint some or all of the members of the Government Entity, or otherwise, for the retention of a Lawyer to perform a Government Legal Engagement.

Date: ____________________________

Signature: ______________________________________
Several of the Task Force members not concurring in the additional recommendation have submitted personal statements regarding their reasons for withholding their support.

**Statement of Senator Howard H. Baker, Jr.**

First, I would like to congratulate Chairman Martin for his patient and even-handed service as head of the Task Force. I think his deft handling of difficult matters was exceptional. I fully support the unanimous recommendations contained in Part I of the Report and Recommendations of the Task Force.

With respect to the proposed rule set forth as an additional recommendation, however, I fear that when taken together, the provisions of the rule proposed as an additional recommendation will have such a chilling effect on lawyers’ participation in the political process that it will seriously damage the traditional role of attorneys in the political and public policy fields. For that reason, I do not support the rule proposed as an additional recommendation.

**Statement of David E. Cardwell**

This personal statement is supplemental to the Rationale For Opposition to Rule Proposed as an Additional Recommendation, which I support. I also support the statement by Senator Howard Baker, Jr.

However, I believe there is an additional problem with the rebuttable presumption rule not stated in the Rationale For Opposition to Rule Proposed as an Additional Recommendation. Specifically, I’m concerned that because of the very public nature of government legal engagements and the controversy that often arises in such matters, the rule can be misused by those who will bring disciplinary complaints against lawyers undertaking government legal engagements. While the lawyer or law firm may ultimately be successful in defending itself against the complaint brought by someone disgruntled with that lawyer’s or law firm’s advocacy for the client, the dismissal may not occur for some time and after considerable time and expense involved in proving the contribution was within one of the rebuttable presumptions. This will clearly be a deterrent to lawyers and law firms undertaking controversial engagements by public agencies.

**Statement Of Ronald L. Olson**

With respect and appreciation of the enormous effort and great good faith with which the members of the Task Force proposing the additional recommendation have struggled with how best to address lawyer political contributions to government officials, I respectfully decline to support the additional recommendation.
From my perspective, the presumption of unethical conduct is at once too complex in application and too uneven in result. Unfortunately, the complexity becomes more evident with each re-reading. It emerges from the challenge of shifting the burden of proof from the prosecutor to the prosecuted and then trying to re-balance the equities with broad exceptions. This complex enforcement mechanism seems likely to require a “trial” in most instances where a substantial contribution and a work assignment coincide in a two-year period and, as such, seems ill-suited for often over-worked bar monitors charged with enforcing professional ethics.

It also seems likely that a prosecution based on the letter of the proposed presumption and the disqualification rule will result in a moral/ethical unevenness that is, at best, irrational and, at worst, unfair. Several examples will illustrate my concern.

1. In the situation where two lawyers make similar sizeable contributions with the same (either pure or impure) purpose in mind, but only one gets the work assignment (perhaps because she is the better lawyer), the adverse presumption only applies as to the one chosen for the work.

2. As to those who solicit contributions, the application of the presumption turns in part on the effectiveness of the solicitation. That is, although two officials may have equally improper motives, the presumption would only arise against the one who raises a sum in excess of the triggering amount.

3. The presumption applies only if the work assignment follows the contribution, not if the contribution follows the work assignment. This means, for example, that a lawyer who makes an express or implicit “promise” to make a contribution, then receives a work assignment, and only then makes the contribution, is immune from the presumption.

4. The presumption does not apply if the recipient of the contribution is, for example, the contributor’s former law partner or uncle, no matter how much work is received. On the other hand, the presumption does apply if the contributor is both unrelated to the recipient and the best person for the job, and the contributor receives only one work assignment.

5. The broad catch-all exception -- “other reasons” -- presumably is intended to pick up the indicators of “proper” intent referenced earlier in the report (see Discussion of Proposed Model Rule of Professional Conduct), and thereby to protect those who regularly give sizeable contributions not only to recipients who award work but also to those who do not, and those who give to support their social, economic or political beliefs, such as a belief that those who do public service should be encouraged or supported with political contributions.

6. The presumption applies if a lawyer receiving public work gives above the threshold sum, but it does not apply if, while that same lawyer gives less than the threshold, her best friend or spouse gives 10 times the threshold sum for the purpose of influencing the direction of work to the lawyer.
(7) The presumption applies if a law firm contributes any amount above the threshold from a collective fund, but not if 10 lawyers in the same firm write individual checks which total 9 times the threshold sum.

These examples emerge from my personal reading of the proposed presumption, not any interpretation agreed upon by the Task Force. If they are valid, then I submit that the effort to balance enforcement objectives with leeway for "honest" political contributions is misguided. In my opinion, it is likely to result in an uneven ethical line which -- alongside our unanimous recommendations -- outweighs any additional enforcement made possible by the use of the presumption.

For these reasons, I respectfully and regretfully decline to join the members of the Task Force proposing the additional recommendation in their support of the proposed rule of presumption and disqualification.

Statement Of Chief Justice Thomas R. Phillips

Because I fully agree that the concerns which prompted this effort justify amendments to the Model Rules, I unreservedly join in all the unanimous recommendations of Part I of the report of the American Bar Association Task Force on Lawyers' Political Contributions. I also join in the spirit, but not the letter, of the additional recommendation of Part I of this Report. But, having been a candidate in several contested elections, I have serious reservations that these proposals as framed are either vague, unworkable, or demeaning to the bar and to public servants. Accordingly, I abstain from voting on that portion of the report.

A properly constructed contribution limit would, I believe, enhance public confidence in both lawyers and elected public officials. Campaign finance limits aim to promote proper practices and discourage improper ones. Because lawyers are in a special position to reap substantial financial rewards from certain elected officials, it is entirely appropriate for a bar disciplinary rule to prohibit a lawyer who has contributed substantially to an elected official from accepting a legal engagement proffered by that official. This rule may even set that limit below generally applicable contribution limits otherwise set by law. By such a rule, the promulgating authority is not suggesting that any lawyer has made a contribution, or any official accepted one from a lawyer, for an improper purpose. The rule merely proclaims that public confidence will be enhanced by severing the connection between large contributors and legal work awarded to such contributors.

On the other hand, there is no place in the disciplinary scheme for rules that prohibit, or even discourage, attorneys who are not seeking legal business from an official from contributing to or participating in an election campaign to whatever extent they desire, so long as they abide by other applicable laws. The honorable and essential role of the bar in our country's political development is recognized in the Task Force's report, and if fully recounted would fill volumes. Such participation should, absent unusual circumstances, be encouraged.
Instead, the proposed additional rule seems to me to unduly discourage political participation by lawyers who do not seek government legal work. The rules create a presumption, even if rebuttable, that any contribution in excess of the limit has been given "for the purpose of being retained or being considered eligible" for public legal employment. The rules apply not just to a lawyer who subsequently accepts an appointment, but to any lawyer who is "associated" with a lawyer who has made such a contribution. What message does this presumption of impropriety send to the public about how lawyers view themselves and our elected public servants?

My second major objection to the proposed rule is that it exceeds the scope of sensible regulation by placing a limit on solicitations as well as contributions. Contributions are easy to measure; solicitations are not. First, from the tautological definition provided, I am not at all sure what conduct is considered a solicitation. A direct request for funds, surely, but how about hosting or speaking at a fundraising event? Or just attending and smiling broadly? Moreover, the determination of whether a solicitation results in a contribution involves a virtually impossible inquiry into motivation. As Benjamin Cardozo observed, "[t]he springs of conduct are subtle and varied." De Cicco v. Schweizer, 221 N.Y. 431, 117 N.E. 807 (1917). Many donors might be hard-pressed to identify whether they contributed because of a particular request, or in spite of it. Sometimes a donor contributes after requests from several people; other times, the donor may not contribute for months. How could an attorney who assists in fundraising ever know, with any certainty, the true effects of his or her efforts? I much prefer allowing solicitors to escape regulation altogether rather than subjecting people who may not even realize they are "soliciting" to the potential recrimination and litigation that the proposed rule invites.

Finally, the proposed rule sets forth too many exceptions to its limits. If the rule were properly structured as a mere contribution limit, with no onus attached to exceeding it except the loss of opportunity for certain business, then the limit could be virtually absolute. Having deemed larger contributions to be improper, however, the drafters apparently feel impelled to incorporate various ways for a lawyer to escape its provisions. I join in the exception for bona fide error, and perhaps in that for prior personal or family connections. I see no justification for the catchall provision, announced as "other reasons sufficient to establish a purpose other than that of being retained or considered for retention to perform a Government Legal Engagement." On its face, this language is so imprecise as to offer virtually no useful guidance. The purpose is illuminated by two examples in a footnote, both of which I find troublesome. The first example is "by showing that the contribution was part of a broader pattern of contributions promoting women or minority candidates." Surely it is not constitutional to discipline someone for giving political contributions in a particular amount to candidates of one sex or one race but not for giving identical amounts to members of another. The second is "by showing that the contribution was part of a broader pattern of contributions ... advancing a cause to which the contributor adheres." Even if such a provision were constitutional, which I doubt, I cannot fathom a rule that would require a disciplinary proceeding to inquire into the ideological purity of a lawyer's political contributions or the ideological consistency of a lawyer and the candidates he or she has supported.

Because I concur in the purpose that the additional recommendation seeks to accomplish, but feel that they go both too far and not far enough in the means they employ, I respectfully abstain.
GENERAL INFORMATION FORM
To Be Appended to Reports with Recommendations

Submitting Entity: Task Force on Lawyers’ Political Contributions
Submitted By John W. Martin, Jr., Chair

1. Summary of Recommendation(s).

This recommendation is the result of findings by the Task Force on Lawyers’ Political Contributions that there is some documentation and a public perception that lawyers or firms make campaign contributions to officials of state and local governments for the purpose of obtaining or being considered eligible for government legal engagements. Based on these findings, the Task Force is proposing a comprehensive set of recommendations to address both the perception and, to the extent it exists, the reality of such conduct.

2. Approval by Submitting Entity.

Approved by the Task Force on Lawyers’ Political Contributions on July 6, 1998, by a mail ballot.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

The House of Delegates adopted Recommendation 10D on August 6, 1997 which condemns the conduct of lawyers making political contributions to public officials in return for being considered eligible by public agencies to perform legal services, calls upon bar associations, lawyer disciplinary agencies and the judiciary to enforce, when applicable, existing Rules of Professional Conduct and requested that the President of the ABA appoint a Task Force to study these issues and submit a recommendation to the House of Delegates. Pursuant to Recommendation 10D, ABA President Jerome J. Shestack, established the Task Force on Lawyers’ Political Contributions. The present recommendation is the recommendation of that Task Force pursuant to Recommendation 10D.
5. **What urgency exists which requires action at this meeting of the House?**

   The above mentioned 1997 resolution created this Task Force with the mandate of studying and making recommendations on the issue and reporting back to the House of Delegates at the 1998 Annual Meeting.

6. **Status of Legislation.**

   The recommendation does not support or oppose any specific legislation.

7. **Cost to the Association.**

   None

8. **Disclosure of Interest.**

   Not Applicable

9. **Referrals.**

   In mid-July 1998 this Report and Recommendation was referred to all members of the House of Delegates and the chairs and staff of all ABA Sections and Divisions.

10. **Contact Person.** (Prior to the meeting.)

   Elizabeth M. Yang, Staff Director
   Task Force on Lawyers' Political Contributions
   American Bar Association
   740 15th Street, NW
   Washington, DC 20005
   202/662-1692

11. **Contact Person.** (Who will present the report to the House.)

   John W. Martin, Jr. (Chair, Task Force on Lawyers' Political Contributions)
   Ford Motor Company
   The American Road - Twelfth Floor
   Dearborn, MI 48121
   313/323-8268

12. **Contact Person Regarding Amendments to This Recommendation.**

   There are no known proposed amendments at this time.