

**Rule 2.12E**

**Disqualification: Campaign Contributions**

**Alan B. Morrison, Esq.**

**June 21, 2004**

Mr. Morrison observes that no rule can be written that can take into account of the circumstances that should be considered in determining when a campaign contribution should require disqualification. In his view, an approach that favors certainty (at a cost of over or under inclusion) should be balanced against the need for flexibility needed to avoid, on the one hand, the appearance that campaign contributions may affect a judge's decision, or, on the other, the risk that a judge may have to step aside unnecessarily when, for example, a modest contribution was made many years ago by a long-time supporter of the judge. Thus, he recommends that the Commission amend Rule 2.12 E as follows:

A judge shall disqualify himself or herself when the judge knows or learns by means of a timely motion that a party or a party's lawyer has made contributions to the judge's campaign that, under the circumstances, might reasonably cause the judge's impartiality to be questioned ~~has within the previous [ ] year[s] made aggregate contributions to the judge's campaign in an amount that is greater than [[ \$ ] for an individual or [ \$ ] for an entity ] ]~~ ~~[[is reasonable and appropriate for an individual or an entity]].~~

Mr. Morrison makes several other suggestions about Rule 2.12E:

► Expansion of the Commentary to reflect specific circumstances, including:

- absolute size of the contribution
- size of the contribution relative to total amount of money raised
- how long ago the contribution was made
- whether the donor had regularly given to the judge in the past
- whether the donor had other connections with the judge's campaign;
- whether anyone else connected with the case or the lawyer [such as the lawyer's firm] or parties or amici made other substantial contributions;
- whether the donor also made contributions to the judge's election opponent.

► Contributions by amici alone should not be a basis for recusal, but that contributions by amici should be taken into account if a party or a lawyer/firm has made contributions.

► A judge should not be the final judge of his or her impartiality. (Citing the American Law Institute's recently approved Principles Governing Transnational Civil Procedure which incorporate this principle.)

**Rule 2.12C.2**

**Disqualification: Roles in a Proceeding**

**Alan B. Morrison, Esq.**

**June 21, 2004**

Mr. Morrison asks the Commission to consider if disqualification is required or permitted if a covered person is a member of a law firm, but not the lawyer on the case.

**Rule 2.12D**

**Disqualification: Economic and Other Personal Interests**

**Alan B. Morrison, Esq.**

**June 21, 2004**

Mr. Morrison asks if the Commission has changed the standard from “any economic interest” to a deminimis economic interest standard? If so, he suggests explanation and justification of the new standard and states his opposition to such a change.

**Rule 2.12F**

**Disqualification: Public Statements**

**Alan B. Morrison, Esq.**

**June 21, 2004**

Mr. Morrison strongly supports Rule 2.12F and views it as the correct way to deal with public statements by a judge. Because of a too-literal reading could result in a dissenting judge having to step aside in a subsequent case involving the same issue, the Commission may want to add the phrase “(other than in a prior judicial decision/opinion)” to obviate such a result.

**Rule 2.12G.3**

**Disqualification: Prior Affiliations**

**Alan B. Morrison, Esq.**

**June 21, 2004**

Mr. Morrison poses hypothetical situations to which the rule should apply for the Commission’s consideration. He recommends moving the phrase “has expressed an opinion concerning the merits of the particular case in controversy” to another Rule, such as Rule 2.12F.

Mr. Morrison favors a statement that a judge should be disqualified in any case involving a matter in which the judge personally participated, in whatever capacity, while in government service. (See also 18 USC §§ 205-208/)

As to Comment 2 to Rule 2.12G, Mr. Morrison suggests use of either “legitimate,” “legal,” or “lawful,” instead of “real” in the phrase “real basis for disqualification.”

**Rule 2.08**

**Ensuring the Right to be Heard**

**Alan B. Morrison, Esq.**

**June 21, 2004**

Responding to the Commission's inquiry, Mr. Morrison believes the Commission should avoid in Rule 2.08 the propriety of a judge presiding in a matter in which the judge has attempted a settlement and the settlement was not successful. Mr. Morrison does not view this as a proper subject for the code of judicial conduct and opines that any analysis would be difficult and protracted.

**Rule 2.09**  
**Ex Parte Communications**  
**Alan B. Morrison, Esq.**  
**June 21, 2004**

Mr. Morrison makes drafting suggestions for the black letter to clarify the Commission's intent.

**Rule 2.09, Comment 8**  
**Ex Parte Communications**  
**Alan B. Morrison, Esq.**  
**June 21, 2004**

Responding to the Commission's inquiry about a judge conducting independent Internet factual research, Mr. Morrison observes that a large number of judges conduct such research, given the number of Internet citations in judicial opinions. He views the problem as more akin to judicial notice rather than to factual investigations and suggests that the Commission include comment to this effect.

**Rule 2.11**  
**Judicial Statements on Pending and Future Cases**  
**Alan B. Morrison, Esq.**  
**June 21, 2004**

In addition to offering drafting suggestions for the black letter, Mr. Morrison sees no reason to limit the admonition to "public comment" and recommends that the Rule also cover the situation when a judge says something "privately" that becomes known and has the adverse impact. Comment 8 should also be amended to delete any reference to "public" comment.

**Rule 2.20**  
**Immunity for Discharge of Duties**  
**Alan B. Morrison, Esq.**  
**June 21, 2004**

Responding to the Commission's inquiry about inclusion of Rule 2.20 in the Model Code of Judicial Conduct, Mr. Morrison states his view that the issue of whether and under what circumstances to grant an immunity as primarily a legislative one. He opposes inclusion of Rule 2.20 because he does not believe judges should pass on their own immunities, except when the legislature fails to do so.