

## **SUMMARY**

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### **Canon 2.12 F.**

In Mr. Munford's opinion, the ABA has chosen the wrong approach to minimize the damage political campaigns do to public respect for the judiciary.

He observes that the proposed rules provide for the disqualification of a judge who has made a public statement "that commits, or appears to commit, the judge with respect to an issue in the proceeding or the controversy in the proceeding." He believes that in practice, will not happen very often. Also, he suggests that when an ideologically divided multi-member court can determine disqualification of one of its members, this rule will lead to opinions that do no credit to the impartiality of the judiciary.

If a candidate's statements are knowingly false, he reasons, then the state can restrict them. Judges can be impeached if they violate their oaths. Because a judge has to obey an oath of office, a judicial candidate cannot truthfully commit to, or appear to commit to, some action which, if taken, would violate the judge's oath of office. The judicial ethics authorities ought to be able to sanction such an actual or apparent promise. The standard is not vague, because oaths are not mere ceremonial acts. Finally, expressing the disciplinary action as restricting only knowingly false speech should eliminate most of the First Amendment problem.

### **Commentary to Canon 2.11[4].**

The rules should simply prohibit the judge from making public statements concerning allegations in the media or elsewhere. Freedom to speak for some judges will be coercion to speak for others. No longer will a judge be able to tell the press "I can't." Once you allow an exception, then the judges who wisely do not want to comment to the press will have no shield behind which they can hide.

### **Canon 2.12.D.**

This rule might simply say "any person residing in the judge's household." That would be simpler. The rule ought to apply to household members who are not "family," and you avoid the "domestic partner" debate.

### **Commentary to Canon 2.12.E.**

The comment should explain what a "lawyer" is. Presumably this means an individual lawyer, but we have had trouble in Mississippi with an interpretation that it appears to lump all of the contributions of one law firm together.

### **Canon 5.05(b).**

A judicial candidate for appointment should not be able to seek the support or endorsement from an individual or organization "who has a specific case which is pending before the judge's court, or is pending in a lower court and could be appealed to the judge's court." This restriction in Canon 5.05 is especially important in light of Canon 5.07(b), which says the judge can stay in office while seeking an appointive position.