

The Superior Court  
of  
King County

Deborah D. Fleck, Judge  
401 - 4<sup>th</sup> Avenue North  
Kent, Washington 98032-4429

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April 19, 2010

Clerk of the Court  
Washington State Supreme Court  
Temple of Justice  
P.O. Box 40929  
Olympia, WA 98504-0929

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
2010 APR 21 AM 7:51  
BY RONALD R. CARPENTER  
CLERK

Re: Proposed Recusal Rule

Dear Mr. Carpenter:

We urge the Court to adopt CJC 2.11(A)(4) as proposed by the Task Force for Washington's Code of Judicial Conduct. The rule requires a judge to recuse upon motion by a party that an adverse party has provided financial support to the judge's judicial campaigns. To trigger the rule, the financial support within the last six years must be an amount in excess of 10 times the dollar amount of the campaign contribution limit established by RCW 42.17. The campaign contribution limit is presently \$1,600 for each election (or \$3,200 for a primary followed by a general election).

Popular elections have been Washington's judicial selection method since our Constitution was adopted in 1889. Over the years, judicial popular elections have been under attack for various reasons, including the vast sums of money that such elections attract which put at risk the independence of the judiciary. In order to assure our citizens that impartial judges will not be influenced by major contributors to elections, we believe that a recusal rule is necessary to eliminate that possibility and to maintain public confidence in our judiciary. Nothing undermines public confidence as quickly as the perception that money can buy a favorable vote from a judge.

We are fortunate to have capable and impartial judges at every level of the judiciary. Unlike Washington, other states have not been as fortunate in maintaining public confidence in their judges. The West Virginia *Caperton* case engenders outrage among citizens of every political persuasion in all states, even prompting John Grisham's popular novel *The Appeal*. We know from *Caperton* that \$3 million in campaign contributions from one donor is too much, but there is no guidance as to how much a judge can accept before the due process clause requires the judge's recusal in any case involving substantial donors.

The proposed rule will protect Washington from a *Caperton*-type campaign. No direct contributions to judicial campaigns will be affected by the rule because the rule is triggered only when campaign support exceeds ten times the statutory limit on direct contributions to a judicial campaign. The rule will only affect independent expenditures and PAC donations.

This year the rule would only come into effect when total support—including contributions to the campaign committee, independent expenditures and PAC donations that support the candidate—reach \$16,000 (or a total of \$32,000 if there is a primary and a general election). Very few donors will ever give this level of support to a judicial campaign. The only effect of the rule will be to prevent a **Caperton**-type spending spree.

The rule will not require judges to monitor campaign contributions or to know the identity of their donors. A party must move for recusal in order to trigger the rule, and the judge will only learn about the campaign support if a motion is filed. And if the judge learns that a donor has provided more campaign support than the limit, there is no harm because the judge will recuse from the case, which is the whole purpose of the rule.

We urge you to adopt the rule to preserve public confidence in the courts and your impartiality, not because we believe any of you are unduly influenced by campaign support. The rule is intended to be prophylactic, not punitive, and to provide clear guidelines to campaign supporters, judicial candidates and judges.

Washington's judiciary is among the finest in the United States. We are proud of that reputation and want it to continue. The recusal rule will help all of us maintain the integrity of an election system and our judiciary. We urge your support of CJC 2.11(A)(4) as proposed by the Task Force.



Deborah D. Fleck  
Judge, King County Superior Court  
Chair, Recusal Rule Committee of the  
Judicial Selection Coalition



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Judge, Island County Superior Court  
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Member, Recusal Rule Committee of the  
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Judge of the Superior Court for the  
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T.W. "Chip" Small  
Judge, Chelan County Superior Court



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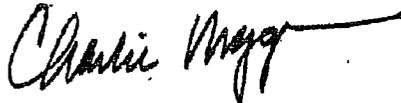
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