MINNESOTA BOARD ON JUDICIAL STANDARDS

Formal Advisory Opinion 2014-1

Judicial Disqualification – Judge's Financial Relationship with Lawyer

Issue. Under what circumstances is disqualification required when a judge presently has or has had a financial relationship with a lawyer, law firm, or prosecuting authority who is now appearing, or will appear, before the judge on a pending or impending matter?

This opinion is a companion to Board Advisory Opinion 2013-2, which addressed the issue: "Under what circumstances is disqualification required when a judge has or has had a professional but non-financial relationship with a lawyer or law firm appearing before the judge on a currently pending matter?"

This opinion does not address financial relationships that may arise from campaign contributions, except to summarize one important case on the constitutional issues that can arise from such contributions.

Authorities. The principal authority for this opinion is Rule 2.11. Other relevant authorities include the comments to Rule 2.11; Rules 2.7, 3.11, and 3.13; Minnesota Supreme Court and Court of Appeals cases; prior Board opinions; and the ABA Annotated Model Code of Judicial Conduct (2012 edition). Unless otherwise noted, all references to Rules and Comments are to those in the Minnesota Code of Judicial Conduct (2009) (hereinafter the "Code").

The Comments serve two functions: (1) to provide "guidance regarding the purpose, meaning, and proper application of the Rules," and (2) to identify "aspirational goals for judges." Code, Scope.

Where the Rules or Comments use a permissive term such as "may" or "should," the intent is not to create a mandate for action. Rather, the conduct being addressed or action being considered "is committed to the personal and professional discretion of the judge." *In re Jacobs*, 802 N.W.2d 748, 754 (Minn. 2011).

Nonetheless, Board advisory opinions will often advise judges of what they *should* do, as well as what they *must* do.

Authority to Issue Advisory Opinions. "The board may issue advisory opinions on proper judicial conduct with respect to the provisions of the Code of Judicial Conduct. . . . The advisory opinion shall not be binding on the hearing panel or the Supreme Court in the exercise of their judicial-discipline responsibilities." Rules of the Board on Judicial Standards, Rule 2(a) (2009).

Terminology, Definitions and Short-hand References. Rule 2.11(A) requires disqualification "in any proceeding" where the judge's impartiality might reasonably be

questioned. Although the Code does not define the term "proceeding," it does define the essentially synonymous term "pending matter," as a "matter that has commenced," and notes that "a matter continues to be pending through any appellate process until final disposition." Code, Terminology.

The terms "economic interest" and "de minimis" are also both defined. *Id.* The definitions are repeated in comment 6 to Rule 2.11. The term "economic interest" means "ownership of more than a de minimis legal or equitable interest." The term "de minimis," when used in the context of an economic interest which may require disqualification, means "an insignificant interest that could not raise a reasonable question regarding the judge's impartiality."

However – except for situations where the judge participates in the management of an economic interest, or when the interest could be substantially affected by the outcome of a proceeding before the judge – the term "economic interest" does not include:

(1) an interest in individual holdings in a mutual fund;

(2) an interest in securities held by an organization in which the judge (or others close to the judge) serves as a director, officer, advisor or participant;

(3) a deposit in a financial institution;

(4) an interest in the issuer of government securities held by the judge.

The Terminology section of the Code defines three groups of people whose relationship to a judge may trigger application of the Rules discussed in this Opinion. Those three groups, who will sometimes be referred in this Opinion as "judge and family" or "judge's family member," are defined as follows:

(1) The term "member of the judge's family" means "a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship."

(2) The term "third degree of relationship" includes: "great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece."

(3) The term "intimate relationship" means "a continuing relationship involving sexual relations as defined in Rule 1.8(j)(1) of the Rules of Professional Conduct."

(4) The term "fiduciary" includes "relationships such as executor, administrator, trustee, or guardian."

ADVISORY OPINION

Code Provisions. The Code contains several principles that are directly relevant to the issue addressed in this opinion. Most of these principles are found in Rule 2.11. Others are found in Rule 3.11 and in cases decided by the Minnesota Supreme Court.

First, the basic rule is that a "judge *shall* disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." Rule 2.11(A) (emphasis added).

Second, disqualification is required when the "judge knows that he or she, individually or as a fiduciary, . . . has an economic interest in the subject matter in controversy or in a party to the proceeding." Rule 2.11(A)(3). The mandatory disqualification provision of Rule 2.11(A)(3) also applies if a judge's family member has an economic interest in the subject matter in controversy or in a party to the proceeding.

Third, disqualification is required if "the judge knows that the judge [or judge's family member] is a person who has more than a de minimis interest which could be substantially affected by the proceeding." Rule 2.11(A)(2)(c).

Fourth, a judge has an affirmative obligation to "keep informed about the judge's personal and fiduciary economic interests," as well as those of "the judge's spouse, members of the judge's household, and any person with whom the judge has an intimate relationship." Rule 2.11(B).

Fifth, a judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed. Rule 2.11, cmt. 2.

Sixth, a judge *should* disclose on the record information which the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification. Rule 2.11, cmt. 5.

Seventh, the parties and their lawyers may waive disqualification, other than for bias or prejudice, if the provisions of Rule 2.11(C) are followed.

Finally, an objective "reasonable examiner" standard applies. The test is whether "an objective, unbiased layperson with full knowledge of the facts and circumstances" would reasonably question the judge's impartiality. *State v. Pratt*, 813 N.W.2d 868, 876 (Minn. 2012).

Rule 3.11, entitled "Financial, Business or Remunerative Activities," contains both permissions and prohibitions. Judges are generally permitted to hold and manage personal and family investments. Rule 3.11(A). Judges are generally forbidden from serving in a control position or even being an employee of a business entity, except family businesses. Rule 3.11(B). And activities generally permitted under Rules 3.11(A) or (B) are prohibited in several circumstances. Rule 3.11(C).

Rule 3.11(C) provides that financial activities otherwise permitted under 3.11(A) and (B) are nonetheless prohibited if the activity will:

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judges;

(3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or

(4) result in other violations of the Code.

The provisions of Rule 3.11(C) reflect the policy goals of Rules 2.11 and 2.7. Recusal is required by Rule 2.11 whenever a judge's impartiality might reasonably be questioned, and this can include situations involving the financial relationships and activities of a judge. At the same time, however, recusals, if too frequent, conflict with a judge's Rule 2.7 duty to decide cases. Rule 3.11(C)(2) therefore requires judges to avoid financial, business and remunerative activities that lead to frequent disqualification. For similar reasons, Rule 3.11(C)(3) requires judges to avoid "frequent transactions or continuing business relationships with lawyers" who are "likely to come before the court on which the judge serves." It is worth noting that Rule 3.11(C)(3) applies to the judge's dealings with *all* individuals likely to come before the *entire* court on which the judge serves. Thus, the rule applies even if the judge is on a court with a large bench, e.g. the Hennepin County District Court, where the judge would not otherwise often need to recuse because the large number of judges on such a court would make unlikely that any particular matter would be assigned to the judge.

Prior Code and Comments. Rules 2.11(A) and (B) in the current Code derive from former Canons 3D(1)(c), 3D(1)(d), and 3D(2). Former Canon 4D is now found in revised form in Rules 3.11 and 3.13. Most of the 2009 changes to Rule 2.11 and its Comments were stylistic and structural, rather than substantive.

However, the 2009 Code did make a substantive change to the definition of "economic interest." Under the current Code, an economic interest must be more than de minimis in order to be disqualifying. Rule 2.11 cmt. 6. As previously noted, "de minimis" is defined as "an insignificant interest that could not raise a reasonable question regarding the judge's impartiality." The prior Code required judges to disqualify themselves for *any* financial interest, however small.

Two other changes are noteworthy.

First, the prior Code had a provision similar to current Rule 2.7, which provides that a "judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law." However, the 2009 Code now includes a Comment that has no counterpart in the prior Code. Comment 1 to Rule 2.7 reads as follows:

> Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come

> before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues requires that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

The essential point to keep in mind here is that the 2009 Code more clearly requires a judge to consider the duty to decide cases when considering whether to recuse in cases where disqualification is not mandatory.

Second, a comment to prior Canon 3D(1)(a) stated that "disclosure is required" of "[p]ersonal relationships of a judge with lawyers appearing in any matter, such as a former partner, close personal friend, or other relationship which may give the appearance of impropriety, conflict of interest, or favoritism . . . ." Current Rule 2.11(A) and its comments do not directly carry forward this prior comment. Instead, Comment 5 to Rule 2.11 now provides: "A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification."

The point to keep in mind here is that certain disclosures which were *required* under the prior Code are now *advisable* under the 2009 Code.

Factual Circumstances: Judge Obtains Loans From Attorneys. *In re Anderson*, 252 N.W.2d 592 (1977), involved a judge who in 1973 borrowed $1,000 from each of two attorneys, both of whom practiced in the same district as the judge. The loans were never reduced to writing, and the existence of the loans was never disclosed. Each loan remained entirely unpaid until May 1976, and the attorneys appeared before the judge in contested litigation during the time the loans were outstanding. The Minnesota Supreme Court suspended the judge for three months without pay for assorted misconduct, including the undisclosed attorney loans.

In explaining its decision, the Court noted that the loans between the judge and the attorneys "were in direct contravention of Canon 5C(4)" and that the judge's loan-related conduct deserved "severe and explicit censure." *Id.* at 594. With certain delineated exceptions, Canon 5C(4) generally provided that a judge should not accept a gift or loan from anyone, and Canon 5C(4)(c) specifically prohibited a judge from accepting a loan from "a party or other person whose interests have come or are likely to come" before the judge. Provisions in the current Code comparable to old Canon 5C(4) can be found in Rule 3.13(A), 3.13(B)(11), and 3.13(C).

While *In re Anderson* was decided under an earlier version of the Code, recusal would still be required if a similar situation arose today. *See* Rules 2.11(A), 2.11(A)(3), and 3.13(A), (B)(11) and (C). *In re Anderson* effectively cautions judges not to borrow money from lawyers who are likely to appear before the judge.

Note that under Rules 3.13(B)(11) and (C)(1), loans, gifts and certain other transfers of *more* than $150 are viewed as improper, even where the transferor is not appearing before the judge. Note also, however, that Rule 3.13(B)(2) allows a judge to accept a loan, gift or other

transfer from a person, including a lawyer, if the person's appearance or interest in a pending or impending matter would require the judge's disqualification in any event. Finally, loans made to a judge by a lending institution in the ordinary course of business are permissible. *See* Rule 3.13(B)(4).

Factual Circumstances: Judge Owes Attorney Money for Professional Services. Judges sometimes find it necessary to retain lawyers or other professionals. If the judge is unable to pay the fees owed for services rendered, problems can arise.

In re Blakely, 772 N.W.2d 516 (Minn. 2009), involved a judge who in October 2002 hired attorney A to represent him in a divorce proceeding. The judge, who anticipated that the divorce would be resolved quickly, agreed to pay the firm's standard hourly rates. Two months later, when the divorce case did not settle, B, another attorney in A's law firm, took over as lead counsel. The final decree was not entered until September, 2004. The judge incurred substantial legal fees, and he was not able to keep current with his bill.

Besides representing clients, B's firm also provided mediation services. In December 2003, the judge appointed attorney B to mediate a dissolution action. At the time, the judge owed more than $42,000 in legal fees. Over the next three and a half years, the judge appointed his attorney as a mediator or third-party neutral in another sixteen cases. The judge also referred a number of acquaintances, including his tax accountant, to his attorney for representation.

When the final decree was entered in the judge's divorce in September 2004, the judge still owed approximately $98,000 in legal fees. Because the judge was only able to make modest monthly payments on his bill, in April 2006 the judge and B negotiated a settlement by which Blakely paid about 40 cents on the dollar. In emails exchanged during those negotiations, B mentioned the judge's mediation referrals at least three times, expressing satisfaction with them and a hope that they would continue. The judge "did not disabuse [B] of any notion that there was a connection between the mediation referrals and the discounted bill." *Id.* at 520.

The Supreme Court affirmed a hearing panel finding that the evidence did not establish an actual quid pro quo relationship between the judge's mediation referrals and B's discounting her bill. However, the Court did find that Judge Blakely's actions reflected a serious lack of judgment:

> Acting in his official capacity as a judge, Judge Blakely ordered parties in family court matters to use the mediation services of his personal attorney, at their own expense, without informing them that [B] represented him in his divorce, that he owned her firm substantial legal fees, or that he had negotiated and obtained a substantial discount of his legal bill.

Id. at 526. The Court emphasized that "the Canons of Judicial Conduct clearly provide that a judge cannot allow his personal relationships to influence his judicial conduct or use the prestige of his office to advance his own personal interests." *Id.* at 526-27. The Court also observed that the judge's "actions created a perception that he was using his position as a judge to secure a discount on his legal fees by making mediation appointments to his attorney," and that his "actions cast doubt on the integrity and impartiality of the judiciary." *Id.* at 527.

Much like *Anderson*, *Blakely* effectively stands for the proposition that when a judge is indebted to an attorney, the judge is required either to recuse in every case where the attorney or the law firm appears, or, at a minimum, to make full disclosure of the financial relationship and give the attorneys and parties an opportunity to consider whether they wish to waive disqualification under Rule 2.11(C). *Blakely*, like *Anderson*, also cautions judges not to allow themselves to become entangled in financial relationships or activities which will necessitate frequent disqualification. Rule 3.11(C).

Factual Circumstances: Judge under Contract to Serve as Expert Witness. In *State v. Pratt*, 813 N.W.2d 868 (Minn. 2012), the Supreme Court vacated Pratt's convictions and reversed the lower court's denial of a motion for a new trial, which in turn was based on the denial of a motion to disqualify the judge who had presided at Pratt's trial.

Pratt was prosecuted by the Hennepin County Attorney's Office (HCAO). On April 10, 2009, a retired judge was assigned to preside at Pratt's trial. This judge was under contract, formed in December 2008, to serve as an expert witness for the HCAO in an unrelated, civil suit against the Hennepin County Medical Center. The existence of the contractual relationship between the judge and HCAO was not disclosed until the second to last day of Pratt's month long trial.

In determining that the judge should have been disqualified, the Court noted:

> [I]t was the judge himself who was retained to provide expert witness services for the HCAO. In that regard, he was not unlike an employee of the HCAO because, as an expert witness for the HCAO, he was to act in a way that was aligned with the HCAO's interests.

Id. at 877. What the Court found troubling was that the "judge was actually retained by the prosecuting authority at the same time the prosecuting authority was appearing before the judge in a criminal case." *Id.* at 878.

The bottom line for the Supreme Court in *Pratt* was this: the judge's contractual relationship with the HCAO was enough to cause an objective unbiased person with full knowledge of the facts and circumstances to reasonably question whether the judge could be impartial at the criminal trial. The Court held that the existence of the contractual relationship (even though the retired judge had done very little by way of performance) was sufficient to trigger application of Rule 2.11(A), which states that a "judge *shall* disqualify himself or herself in *any* proceeding in which the judge's impartiality *might reasonably* be questioned." (Emphasis added.)

Reasoning by analogy, the Supreme Court also cited Rule 3.9 of the Code, which prohibits a retired judge from serving as an arbitrator or mediator "during the period of any judicial assignment." The Court observed, "If a retired judge may not serve as an arbitrator or mediator in a matter unrelated to any party during a judicial assignment, certainly a judge should not be on retainer to a party appearing before [the judge] in a proceeding during a judicial assignment." *Id.*

Pratt stands for the proposition that disqualification is required when a judge has a contractual relationship to provide services to a public agency or private entity which is either a party to a matter pending before the judge, or whose attorneys are involved in a matter pending before the judge.

Finally, and although the Court did not specifically address this issue, a contract for a judge to provide professional services to a prosecutorial authority such as the HCAO would be particularly problematic because it would involve "continuing business relationships with lawyers likely to come before the court on which the judge serves," namely the Hennepin County District Court. Rule 3.11(C)(4).

Factual Circumstances: Judge's Financial Relationship with Former Law Firm. Prior to appointment or election, many judges are in private practice, either as solo practitioners or as members of a law firm. Before being sworn in, the new judge must of course cease practicing law, resign from the firm, and discontinue work on behalf of former clients. Rule 3.11(B) and Rule 3.10.

Rules 3.11(C)(2) and 3.11(C)(3) prohibit a judge from engaging "in financial activities that will lead to frequent disqualification," and from being involved "in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves." Specific guidance to assist new judges in complying with these Rules can be found in Comment 2 to Rule 3.11:

> As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

On a practical level, this Comment and the two Rules effectively direct a new judge to promptly wrap up any financial activities traceable to the judge's former law practice or firm, and to also, as promptly as possible, sever any business or financial relationships with the former law firm or lawyers in that firm.

Minnesota's Board on Judicial Standards and similar agencies in other jurisdictions have recognized that it is sometimes difficult for a new judge to terminate a financial relationship with a former law firm without suffering serious financial detriment. Over the years, Minnesota's Board has issued a number of Advisory Opinions in response to specific questions raised by new judges regarding divestiture and disentanglement from financial relationships with a former firm. Those prior Opinions fall into three basic categories:

a) the installment sale of a practice;
b) the continuation of collection activities after taking office;
c) the retention of life insurance or pension benefits.

These three categories are discussed below.

Sale of Judge's Interest in Former Law Firm. Several Board opinions addressed issues

arising from the installment sale of a judge's interest in a law firm to the former firm or its members. These prior opinions have been revised and consolidated, and are explained here.

A first principle is that a new judge should attempt to liquidate his or her interest in the former law firm as promptly as possible, preferably through a lump sum payment made prior to the time that the new judge takes the oath of office. Where liquidation would cause *serious* financial detriment, an installment sale is permissible, but the duration of the contract should be as short as possible. In addition, the amount to be paid as well as the rate of interest to be charged should be fixed, rather than depend on the firm's financial performance or market fluctuations.

During the time that an installment sale contract is in effect, the former law firm will be a debtor to the judge. The ethical issues that are likely to arise when the judge is a creditor of a law firm differ to some extent from the issues that arise when the judge is indebted to a lawyer. Issues of the latter type are discussed in the *Anderson* and *Blakely* cases, above. When the judge is a creditor of a law firm appearing before the judge, the firm's status as a debtor – the firm's ability to pay the debt – will in most cases probably not be affected, or appear to be affected, by a judge's rulings. Even so, the judge should disclose the relationship. In some cases, however, rulings could affect, or appear to affect, the firm's interest to such an extent that the judge's impartiality might reasonably be questioned. In such cases, disqualification is required under Rule 2.11(A).

In any matter where a debtor prior law firm *represents a party* appearing before the judge, the judge is disqualified if the firm has more than a de minimis interest that could be substantially affected by the outcome of the proceeding. Rule 2.11(A)(2)(c). In any matter where a debtor prior law firm *is a party* appearing before the judge, the judge is disqualified if the judge has an economic interest in the firm. Rule 2.11(A)(2)(3). For example, the firm would ordinarily not have a significant financial interest in the outcome of a criminal case which is being resolved through a negotiated plea agreement. But the firm may well have such an interest in a plaintiff's personal injury representation.

In every case involving the debtor former law firm, the judge should either recuse or disclose the financial relationship. If the former firm has a significant financial interest in the case, the judge should recuse unless the judge discloses the financial relationship and the parties waive disqualification pursuant to Rule 2.11(C). On the other hand, if the judge determines that recusal is not required under Rule 2.11(A), the judge should nevertheless disclose the financial relationship pursuant to comment 5 to the rule. Disclosure of the relationship will make it possible for the lawyers and parties on the other side to decide if they wish to file a motion for disqualification.

Collection Activities. In an Opinion issued February 4, 2010, the Board advised that a newly appointed judge may remain a passive shareholder of a former two person law corporation in which the judge previously practiced law where (1) the sole purpose of the continued existence of the corporation is to collect receivables and pay debts; (2) prior to assuming office, the judge resigns from the corporation in every other capacity; (3) after assuming office, the judge has no legal or other connection to the corporation; (4) the corporation does not conduct any business related to the law or the practice of the law; (5) the corporation is dissolved within a year after the judge assumes office, even if some receivables are still outstanding; (6) the judge's participation in the collection activities is minimal; (7) the judge disqualifies from any case in which the other

former shareholder appears for a period of 12 months; and (8) that the judge continue to disclose the prior relationship for a period of three additional years, and even thereafter, when necessary. This Opinion cited Canons 1, 2, and 3, and Rules 1.1, 1.2, 2.2, 2.11, and 3.11.

In an Opinion issued April 29, 1998, the Board advised that is was permissible for a newly appointed judge to accept a share of contingency fee from a case handled by judge's former law firm if case was settled after the judge accepted appointment to the Bench, so long as the method for determining the fee and the judge's share of the fee had been established prior to the time the judge took office.

In an Opinion issued March 11, 1983, the Board advised that is was permissible for a judge who had been a solo practitioner to continue collecting accounts receivable for reasonable period of time following appointment.

Life Insurance, Pension. In an Opinion issued March 2, 2004, the Board advised that a judge could retain a current interest in a life insurance policy in a 401(k) plan maintained by the judge's former law firm where (1) the plan is separately administered; (2) the value of the policy is not dependent on the financial condition of the firm; (3) the interest is fully vested and requires no communication with or contribution from the firm; (4) the premiums for the policy are paid by the judge; and (5) there is no practical alternative that would not result in serious financial detriment. Canons 1, 2A, 3D(1)(c), 3D(1)(d)(iii).

In an Opinion issued June 27, 2001, the Board advised that a recently appointed judge could maintain a pension and profit-sharing account administered by former members of his law firm for a reasonable period of time, not to exceed three years, when it appeared that the account could not be transferred to another plan without substantial loss and there was no other reasonable alternative.

One Additional Topic: Campaign Contributions

This Opinion does not attempt to address Code provisions which might apply or ethical issues that might arise from contributions made by a lawyer to a judicial candidate's election campaign. However, the Board does wish to alert readers to a U.S. Supreme Court decision which discusses certain due process constitutional issues that can arise from such contributions.

The case is *Caperton v. Massey*, 556 U.S. 868 (2009), which involved review of a West Virginia Supreme Court justice's decision not to recuse himself even though the president and chief executive officer of Massey had contributed around $3 million to the justice's re-election campaign at a time when it was highly likely that Massey would be seeking review in West Virginia's highest court of a lower court's entry of a $50 million judgment.

The Court observed that there "is a serious risk of actual bias when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent." In sum, the Court determined that under the Due Process clause, the "serious, objective

risk of actual bias" that resulted from the size and timing of the campaign contribution, and the amount of money that Massey had at stake in the case "required recusal."

Although *Caperton* did not involve a judge's financial relations with a lawyer, the Court's analysis and reasoning could apply to situations where a lawyer who made significant monetary or other contributions to the judge's election campaign now appears before the judge on some pending matter.

In addition, the Board notes that certain provisions in the Rules paradoxically appear to require knowledge on the part of a judge and ignorance of the part of a judicial candidate. Rule 2.11(B) states that a "judge shall keep informed about the judge's . . . economic interests." On the other hand, judicial candidates, including judges, are required by Rule 4.2(A)(5) to "take reasonable measures to ensure that [they do] not obtain any information identifying those who contribute or refuse to contribute to the candidate's campaign."

In the Board's view, the specificity of Rule 4.2(A)(5) controls over the generality of Rule 2.11(B). Judges and judicial candidates should conscientiously adhere to the Rule 4.2(A)(5) mandate to not obtain any information about campaign contributors. If, despite best efforts, a judicial candidate comes to have knowledge of campaign contributions, then the considerations discussed in *Caperton* and the provisions of Rule 2.11 and Rule 3.13 may come to apply.

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