

**BRENNAN
CENTER
FOR JUSTICE**

Recusal Reform in the States, 2009-2010

State	Issue	Forum	Proposal or Initiative	Current Practice	Status	Information
CA	Campaign conduct; public accountability and education	Commission for Impartial Courts, reporting to the Judicial Council of California	Proposals include: <ul style="list-style-type: none"> • Add provision to canon of judicial ethics for disqualification of sitting judge who has made public statement while campaigning that a reasonable person would believe predisposes judge to biased ruling in pending case • Trial judges will be required to disclose in court all contributions of \$100 or more • Judges automatically disqualify themselves in cases involving parties whose contributions exceeded specific threshold levels 	<ul style="list-style-type: none"> • Currently, Provision 3E(2) of the Judicial Code of Conduct makes no mention of disqualification on grounds either of a judge's public statements or the receipt of campaign contributions • Provision 3E(2) does not currently require any disclosure based received contributions 	<ul style="list-style-type: none"> • Commission issued final report on December 15, 2009 	<ul style="list-style-type: none"> • Final Report: Recommendation for Safeguarding Judicial Quality, Impartiality, and Accountability in CA (12/15/2009) • Recommendations Conversions Chart (12/15/2009) • Chart of Comments (12/15/2009) • Consolidated List of Recommendations (12/15/2009) • Related Press: Ventura County Star (6/10/2009) • California Judicial Code of Conduct (amended 4/29/2009)
FL	Disqualification	State Bar Association	<ul style="list-style-type: none"> • The Judicial Administration and Evaluation Committee (JAEC) and the Rules of Judicial Administration and Education Committee of the Florida Bar have formed a joint subcommittee to address recusal reform 	<ul style="list-style-type: none"> • Provision 3E(1) of the Judicial Code of Conduct states that a judge should disqualify himself/herself when the judge's impartiality might reasonably be questioned 	<ul style="list-style-type: none"> • On October 8, 2009, JAEC met to discuss parameters of recusal reform; Judicial Ethics Advisory Committee also attended; Charlie Geyh (of Indiana University) gave comments 	<ul style="list-style-type: none"> • Florida Bar News (11/1/2009) • Florida Bar News (8/1/2009)

Recusal Reform in the States, 2009-2010

<u>State</u>	<u>Issue</u>	<u>Forum</u>	<u>Proposal or Initiative</u>	<u>Current Practice</u>	<u>Status</u>	<u>Information</u>
GA	Disqualification	State House	<ul style="list-style-type: none"> • H.B. 601: Specifies when a judge is required to recuse, and states that recusal is required when a judge fails to set up a campaign committee to accept contributions and instead directly solicits contributions from a party, attorney, or law firm in a pending case 	<ul style="list-style-type: none"> • Canon 3 of GA Judicial Code of Conduct states that a judge should disqualify himself/herself when the judge's impartiality might reasonably be questioned 	<ul style="list-style-type: none"> • 4/1/2009 Session ends without bill's passage; all bills carry over to 2010 session (which began 1/11/2010) 	<ul style="list-style-type: none"> • H.B. 601
MA	Disqualification	State Senate	<ul style="list-style-type: none"> • S.B. 1807: Specifies when a judge is required to recuse and requires judges refer all disqualification motions to another judge assigned to hear such a proceeding • S.B. 1567: Specifies when a judge is required to recuse 	<ul style="list-style-type: none"> • Canon 4(E) of MA Judicial Code of Conduct states that a magistrate should disqualify himself/herself when the judge's impartiality might reasonably be questioned 	<ul style="list-style-type: none"> • 12/31/2009 Session ends without bills' passage; all bills carry over to 2010 session (which began 1/4/2010) • 6/2/2009 Public hearing held • 1/20/2009 Bills referred to Joint Committee on Judiciary 	<ul style="list-style-type: none"> • S.B. 1807 • S.B. 1567

BRENNAN
CENTER
FOR JUSTICE

Recusal Reform in the States, 2009-2010

<u>State</u>	<u>Issue</u>	<u>Forum</u>	<u>Proposal or Initiative</u>	<u>Current Practice</u>	<u>Status</u>	<u>Information</u>
MI	Disqualification	Michigan Supreme Court	<ul style="list-style-type: none"> Supreme Court adopts formal rules for recusal requiring state Supreme Court justices to disqualify themselves in cases in which their impartiality might reasonably be questioned The adopted rules require recusal decisions to be rendered in writing The new rules also allow the full Supreme Court to review an individual justice's decision not to recuse. 	<p>Prior to adoption of rules:</p> <ul style="list-style-type: none"> Judges decided on motions concerning their own disqualification Judges were not required to issue reason for denial of such motions Michigan had not formally adopted the ABA's general disqualification standard, Rule 2.11(A) of the Model Code 	<ul style="list-style-type: none"> 11/25/2009 Supreme Court formally adopts recusal rules 11/5/2009 Supreme Court announces decision to adopt rules for recusal, patterned on "Proposal C" (see "Proposals" in adjacent column) 	<ul style="list-style-type: none"> Court Order (11/25/2009) Related Press: <ul style="list-style-type: none"> Michigan Free Press (1/11/2010); Detroit News (12/1/2009); Michigan Free Press (11/26/2009); Associated Press (11/27/2009) Proposals (3/18/2009) Joint Brennan Center and Justice at Stake Letter to Michigan Supreme Court (7/31/2009)
MI	Disqualification	State House	<ul style="list-style-type: none"> House Joint Resolution P: Adds a section to the State Constitution to clarify the circumstances under which justices of the Supreme Court must disqualify themselves from cases in which their impartiality might reasonably be questioned 	<ul style="list-style-type: none"> Judges decide on motions concerning their own disqualification Judges are not required to issue reason for denial of such motions Michigan has not formally adopted the ABA's general disqualification standard, Rule 2.11(A) of the Model Code 	<ul style="list-style-type: none"> 12/31/2009 Session ends without bill's passage; all bills carry over to 2010 session (which began 1/13/2010) 3/17/2009: Bill introduced 	<ul style="list-style-type: none"> HJRP Michigan Policy Network Bill Summary and Analysis
MT	Disqualification	State House	<ul style="list-style-type: none"> LC 2027: Requires recusal of a justice of the supreme court if he or she received campaign contribution in excess of \$250 	<ul style="list-style-type: none"> List of grounds for recusal in state code does not include campaign contributions 	<ul style="list-style-type: none"> 4/28/2009: Bill died in draft process 	<ul style="list-style-type: none"> LC2027 Bill history

Recusal Reform in the States, 2009-2010

<u>State</u>	<u>Issue</u>	<u>Forum</u>	<u>Proposal or Initiative</u>	<u>Current Practice</u>	<u>Status</u>	<u>Information</u>
NC	Disqualification	State Senate	<ul style="list-style-type: none"> • S.B. 659: States that judges, in response to a disqualification motion, can either recuse or refer the disqualification motion to the Chief Justice for reassignment 	<ul style="list-style-type: none"> • Canon 3(C) of N.C. Judicial Code of Conduct states that a judge should disqualify himself/herself when the judge's impartiality may reasonably be questioned; judges are not currently required to refer disqualification motions to another judge for consideration 	<ul style="list-style-type: none"> • 8/7/2009: Session ends without bill's passage; all bills carry over to 2010 session (which begins 5/10/2010) • 3/19/2009 Referred to Committee on Judiciary 	<ul style="list-style-type: none"> • S.B. 659
NC	Disqualification	State Senate	<ul style="list-style-type: none"> • S.B. 797: Clarifies that a judge may recuse for any reason rendering him/her unable to perform the duties required of a judge in an impartial manner; requires that reasons for disqualification be put in writing 	<ul style="list-style-type: none"> • Canon 3 of N.C. Judicial Code of Conduct states that a judge should disqualify himself/herself when the judge's impartiality may reasonably be questioned 	<ul style="list-style-type: none"> • 8/7/2009: Session ends without bill's passage; all bills carry over to 2010 session (which begins 5/10/2010) • 5/28/2009: In Committee on Judiciary; reported favorably • 5/11/2009: Bill passes Senate 	<ul style="list-style-type: none"> • S.B. 797

**BRENNAN
CENTER
FOR JUSTICE**

Recusal Reform in the States, 2009-2010

State	Issue	Forum	Proposal or Initiative	Current Practice	Status	Information
NV	Disqualification	Commission on the Amendment to the Nevada Code of Judicial Conduct, reporting to Supreme Court	<ul style="list-style-type: none"> Commission recommended disqualification in the event that a judge receives campaign contributions of \$50,000 or more from a party appearing before judge; these benchmarks vary in smaller districts where less aggregate money is spent on elections 	<ul style="list-style-type: none"> Nevada has adopted ABA's general disqualification standard, Rule 2.11(A) of the Model Code 	<ul style="list-style-type: none"> Effective 1/19/2010 – Supreme Court revises Judicial Code of Conduct and rejects initial proposal for \$50,000 threshold to trigger recusal Committee issued its report on disqualification 7/20/2009 	<ul style="list-style-type: none"> Related Press: Associated Press (1/1/2010); Las Vegas Journal (7/21/2009); Las Vegas Review Journal (6/23/2009)
TX	Disqualification	State House	<ul style="list-style-type: none"> H.B. 4548: States that a justice of the supreme court or judge of the court of criminal appeals shall recuse him/herself from any case in which he/she has accepted political contributions totaling \$1,000 over preceding 4 years from party to case 	<ul style="list-style-type: none"> Disqualification provision of Government Code does not consider campaign contributions made to judges 	<ul style="list-style-type: none"> 4/20/2009: Bill died in committee 	<ul style="list-style-type: none"> H.B. 4548

Recusal Reform in the States, 2009-2010

Recusal Reform in the States, 2009-2010

<u>State</u>	<u>Issue</u>	<u>Forum</u>	<u>Proposal or Initiative</u>	<u>Current Practice</u>	<u>Status</u>	<u>Information</u>
WA	Disqualification	Judicial Conduct Task Force, reporting to Supreme Court	<ul style="list-style-type: none"> • Proposal for new Code of Judicial Conduct includes, as mandatory grounds for disqualification, financial support of judge's campaign within last six years by active litigant, when such support amounts to more than ten times the state contribution limit. (Financial support is defined as campaign contributions or independent expenditures made in support of judge's campaign and/or against opposing candidate, and includes a percentage of money given to PACs that support the judge's candidacy and/or attack his opponent's) • Judge may disqualify himself if such financial support is more than two times but less than ten times the state contribution limit 	<ul style="list-style-type: none"> • Washington has adopted ABA's general disqualification standard, Rule 2.11(A) of the Model Code 	<ul style="list-style-type: none"> • Public comment period on proposed Judicial Code of Conduct through April 30, 2010 	<ul style="list-style-type: none"> • Proposed New Washington State Code of Judicial Conduct (9/8/2009)



**BRENNAN
CENTER
FOR JUSTICE**

Recusal Reform in the States, 2009-2010

<u>State</u>	<u>Issue</u>	<u>Forum</u>	<u>Proposal or Initiative</u>	<u>Current Practice</u>	<u>Status</u>	<u>Information</u>
WI	Disqualification	Petitions to Supreme Court of Wisconsin	<ul style="list-style-type: none"> • Four petitions to amend the Code of Judicial Conduct: • One proposed rule (by League of Women Voters) would require recusal when a party to a case contributed \$1,000; • One proposed rule (by retired Justice William Bablitch) would require recusal when a party to a case contributed \$10,000; • One proposed rule (by Wisconsin Realtors Association) provides that a judge shall not be disqualified solely because of a lawful contribution; • The last proposed rule (by Wisconsin Manufacturers and Commerce ("WMC")) provides that a judge shall not be disqualified solely because of a party's independent expenditures. 	<ul style="list-style-type: none"> • Prior to 10/28/2009, campaign contributions were not among the grounds for recusal specifically enumerated in state code of judicial conduct 	<ul style="list-style-type: none"> • 1/15/2010 Justice David Prosser, Jr. submitted proposed revisions to rule petitions 08-25 and 09-10 • 12/7/2009 Supreme Court withdraws October 28 vote • A public hearing was held on 10/28/2009. Following the hearing, the Supreme Court voted 4-3 to grant the petitions filed by the Realtors Association and WMC, and to deny the remaining two petitions. 	<ul style="list-style-type: none"> • Justice Prosser's proposed revisions to Rule Petitions 08-25 and 09-10 • Petition by League of Women Voters (5/2009) • Petition by William Bablitch (10/16/2009) • Petition by Wisconsin Realtors Association (9/30/2008) • Petition by WMC (10/16/2009) • Brennan Center Letter to Wisconsin Supreme Court (10/9/2009) • Related Press: Milwaukee Journal Sentinel (1/18/2010); State Bar of Wisconsin (12/9/2009); Milwaukee Journal Sentinel (10/28/2009) Milwaukee Journal Sentinel (editorial) (10/20/2009) Milwaukee Journal Sentinel (10/16/2009)

Recusal Reform in the States, 2009-2010

