

Rule Change #2001(21)

The Colorado Rules of Judicial Discipline Appendix to Chapter 24: Canon 3

The following Canon is Amended and Adopted November 8, 2001, effective January 1, 2002:

CANON 3

A JUDGE SHOULD PERFORM THE DUTIES OF HIS OR HER OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of a judge take precedence over all his or her other activities. A judge's judicial duties include all the duties of his or her office prescribed by law. In the performance of these duties, the following standards apply:

- A. [*** NO CHANGE]
- B. [*** NO CHANGE]
- C. Disqualification.
 - (1) [*** NO CHANGE]
 - (2) [*** NO CHANGE]
 - (3) For the purposes of this section:
 - (a) The degree of relationship is calculated according to the civil law system;

COMMENTARY

According to the civil law system, the third degree of relationship test would, for example, disqualify the judge if his or her spouse's ~~father, grandfather, uncle, brother, or niece's husband~~ parent, grandparent, uncle or aunt, sibling, niece or nephew, or spouse of a niece or nephew were a party or lawyer in the proceeding, but would not disqualify the judge if a cousin were a party or lawyer in the proceeding.

- (b) [*** NO CHANGE]

(c) "financial interest" ~~means~~ is defined as ownership of more than a one percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value exceeding five thousand dollars, ~~interest, however small,~~ or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

- (I) [*** NO CHANGE]
- (II) [*** NO CHANGE]
- (III) [*** NO CHANGE]
- (IV) [*** NO CHANGE]

D. Remittal of Disqualification—Trial Court and Court of Appeals Judges.

A judge who is or may be disqualified by the terms of Canon 3C(1) ~~(e) or Canon 3C(1)(d)~~ may, instead of withdrawing from the proceeding, disclose on the record the basis of the judge's disqualification. If, based on such disclosure, the parties and lawyers,

independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that the judge's financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

COMMENTARY

[*** NO CHANGE]

E. Remittal of Disqualification—Justices of the Supreme Court.

(1) A justice who is or may be disqualified by the terms of Canon 3C may, instead of withdrawing from the proceeding, disclose in writing the basis of the justice's disqualification, and ask the parties to consider whether they wish to waive disqualification. The justice shall not participate in the parties' discussions and shall require the parties to hold their discussions outside the presence of the justice. The justice shall not comment in any manner on the merits or advisability of waiver, other than to explain the right of disqualification or to further elucidate the ground or grounds of disqualification if requested by the parties. The justice is permitted to advise the parties that he or she is willing to participate in the case with the agreement of all the parties.

(2) The justice may ask the parties to affirmatively indicate their position on the justice's disqualification, or give the parties a reasonable length of time to waive disqualification by advising the parties either (a) that their failure to act will be construed as a decision to waive the potential disqualification, or (b) that their failure to act will be construed as a decision not to waive the potential disqualification. An attorney, on behalf of his or her client, may make the decision without consulting the client if the client is not present or readily available, or if the attorney decides that consultation is unnecessary.

F. Rule of Necessity.

The rule of necessity is an exception to the principle that every litigant is entitled to be heard by a judge who is not subject to any disqualifications which might reasonably cause the judge's impartiality to be questioned. The rule of necessity has been invoked where disqualifications exist as to all or a majority of the members of the court that would normally hear a matter. Rather than deny a party access to court, judicial disqualification yields to the demands of necessity.

Amended and Adopted by the Court, En Banc, November 8, 2001, effective January 1, 2002.

BY THE COURT:

**Mary J. Mullarkey
Chief Justice, Colorado Supreme Court**