

**WHAT REPRESENTING THE
JUDGE OR CONTRIBUTING
TO HER CAMPAIGN CAN MEAN
TO YOUR CLIENTS:
Proposed New Disqualification and
Recusal Rules**

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Past-President, Texas Academy of Family Law Specialists (1990-91)
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State Bar of Texas *Gene Cavin Award for Excellence in Continuing Legal Education* 1996
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Editor - Texas Academy of Family Law Specialists' Family Law Forum (1988-89)
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Chapter 21 on *Business Interests* in Bancroft-Whitney's TEXAS FAMILY LAW SERVICE (Speer's 6th ed.)

Fitting a Round Peg Into A Square Hole: Section 3.63, Texas Family Code, and the Marriage that Crosses States Lines, 13 ST. MARY'S L.J. 477 (1982)

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State Bar's Advanced Family Law Course

Intra and Inter Family Transactions (1983); Handling the Appeal: Procedures and Pitfalls (1984); Methods and Tools of Discovery (1985); Characterization and Reimbursement (1986); Trusts and Family Law (1986); The Family Law Case in the Appellate Court (1987); Post-Divorce Division of Property (1988); Marital Agreements: Enforcement and Defense (1989); Marital Liabilities (1990); Rules of Procedure (1991); Valuation Overview (1992); Deposition Use in Trial: Cassette Tapes, Video, Audio, Reading and Editing (1993); The Great Debate: Dividing Goodwill on Divorce (1994); Characterization (1995); Ordinary Reimbursement and Creative Theories of Reimbursement (1996); Qualifying and Rejecting Expert Witnesses (1997); New Developments in Civil Procedure and Evidence (1998); The Expert Witness Manual (1999)

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State Bar's Advanced Evidence & Discovery Course

Successful Mandamus Approaches in Discovery (1988); Mandamus (1989); Preservation of Privileges, Exemptions and Objections (1990); Business and Public Records (1993); Grab Bag: Evidence & Discovery (1993); Common Evidence Problems (1994); Managing Documents--The Technology (1996); Evidence Grab Bag (1997); Evidence Grab Bag (1998); Making and Meeting Objections (1998-99); Evidentiary Issues Surrounding Expert Witnesses (1999)

State Bar's Advanced Appellate Course Handling the Appeal from a Bench Trial in a Civil Case (1989);

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**WHAT REPRESENTING THE JUDGE OR CONTRIBUTING TO HER CAMPAIGN
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by

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I. Scope of Article. Disqualification of a judge occurs in those circumstances where the Texas Constitution states a judge is disqualified from acting in a case. Disqualification is automatic, and cannot be waived. Recusal of judges occurs when the judge himself or herself, or another judge sitting in a recusal proceeding, determines that the judge may not hear the case under the standards for recusal set out in Texas statutes or set out in TEX. R. CIV. P. 18b. As one student author described it: “[D]isqualification [is] based on judge’s connection with parties while recusal [is] based on judge’s ability to be impartial.” Casenote, *Oil and Gas–Implied Covenants–Texas Oil and Gas Leases Contain Separate and Distinct Implied Covenant to Further Explore After Lucrative Production*, 20 ST. MARY’S L.J. 981, 981 (1989).

This article touches on disqualification of judges under the Texas Constitution, and then recusal under Texas statutes and TEX. R. CIV. P. 18b, and then discusses two possible new grounds for recusal recommended by the Supreme Court Advisory Committee, one based upon representing the judge in a legal proceeding and the other based upon excessive contributions to the judge’s campaign. Note that the grounds for recusal based upon representing the judge in a legal proceeding and upon excess political contributions have not yet been enacted by the Texas Supreme Court.

A justice of an appellate court can also be disqualified or recused. TEX. R. APP. P. 16.1, which lists the “Grounds for Disqualification” of an appellate court justice, provides:

The grounds for disqualification of an appellate court justice or judge are determined by the Constitution and laws of Texas.

A judge of a statutory probate court can be recused under TEX. GOV’T CODE § 25.00255, “Recusal or Disqualification of Judge.” Those standards are not discussed in this article.

II. Disqualification Under the Constitution. The ultimate authority on disqualification is the Texas Constitution. Article V, Section 11 of the Texas Constitution provides:

§ 11. Disqualification of judges; exchange of districts; holding court for other judges

Sec. 11. No judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him, either by affinity or consanguinity, within such a degree as may be prescribed by law, or when he shall have been counsel in the case. [Emphasis added] When the Supreme Court, the Court of Criminal Appeals, the Court of Civil Appeals, or any member of either, shall be thus disqualified to hear and determine any case or cases in said court, the same shall be certified to the Governor of the State, who shall immediately commission the requisite number of persons learned in the law for the trial and determination of such cause or causes. When a judge of the District Court is disqualified by any of the causes above stated, the parties may, by consent, appoint a proper person to try said case; or upon their failing to do so, a competent person may be appointed to try the same in the county where it is pending, in such manner as may be prescribed by law. And the District Judges may exchange districts, or hold courts for each other when they may deem it expedient, and shall do so when required by law. This disqualification of judges of inferior tribunals shall be remedied and vacancies in their offices filled as may be prescribed by law.

To be “interested” in a case so as to be constitutionally disqualified, “the judge must have so direct an interest in the cause or matter that the result must necessarily affect him or her to his personal or pecuniary loss or gain.” *Sears v. Olivarez*, 28 S.W.3d 611, 614 (Tex. App.—Corpus Christi 2000, no pet.). “Connected within such a degree as may be prescribed by law” means within the third degree by affinity (marriage) or consanguinity (blood). TEX. GOV’T CODE ANN. §21.005.

These three constitutional grounds for disqualification are jurisdictional, cannot be waived, and may be raised

for the first time after judgment. *Fry v. Tucker*, 146 Tex. 18, 202 S.W.2d 218, 221-22 (1947). A judge who is disqualified under the constitution is without jurisdiction to rule in the case, and any judgment rendered by him or her is void. *Fry v. Tucker*, 202 S.W.2d 218, 221 (Tex. 1947). "If a judge is disqualified under the Constitution, he is absolutely without jurisdiction in the case, and any judgment rendered by him is void, without effect, and subject to collateral attack." *Zarate v. Sun Operating Ltd., Inc.*, 40 S.W.3d 617, 621 (Tex. App.--San Antonio 2001, pet. denied).

You can get good background information on disqualification in the article written by former Texas Supreme Court Justice William Wayne Kilgarlin & Jennifer Bruch, *Disqualification and Recusal of Judges*, 17 ST. MARY'S L. J. 599 (1986).

III. Tertiary Recusal Motions. The Texas Civil Practice and Remedies Code contains a relatively-new provision that is triggered by the filing of the third or subsequent recusal motion in one case. The provision reads as follows:

§ 30.016. Recusal or Disqualification of Certain Judges

(a) In this section, "tertiary recusal motion" means a third or subsequent motion for recusal or disqualification filed against a district court, statutory probate court, or statutory county court judge by the same party in a case.

(b) A judge who declines recusal after a tertiary recusal motion is filed shall comply with applicable rules of procedure for recusal and disqualification except that the judge shall continue to:

- (1) preside over the case;
- (2) sign orders in the case; and
- (3) move the case to final disposition as though a tertiary recusal motion had not been filed.

(c) A judge hearing a tertiary recusal motion against another judge who denies the motion shall award reasonable and necessary attorney's fees and costs to the party opposing the motion. The party making the motion and the attorney for the party are jointly and severally liable for the award of fees and costs. The fees and costs must be paid before the 31st day after the date the

order denying the tertiary recusal motion is rendered, unless the order is properly superseded.

(d) The denial of a tertiary recusal motion is only reviewable on appeal from final judgment.

(e) If a tertiary recusal motion is finally sustained, the new judge for the case shall vacate all orders signed by the sitting judge during the pendency of the tertiary recusal motion.

It is unclear whether the "tertiary recusal motion" means the third motion against the same judge, or the third motion filed in the case, even against different judges.

IV. Disqualification or Recusal Under TEX. R. CIV. P. 18b. Grounds for disqualification and recusal of trial judges are set out in TEX. R. CIV. P. 18b. One problem with Rule 18b(1) is that its language is not identical to the language of TEX. CONST. art. V, § 11, and yet the constitutional provision can neither be expanded nor narrowed by the Texas Supreme Court exercising its rule-making authority. Consequently, Rule 18b(1) can be ignored and the constitutional provision relied on instead.

TEX. R. CIV. P. 18b reads as follows:

Rule 18b. Grounds For Disqualification and Recusal of Judges

(1) **Disqualification.** Judges shall disqualify themselves in all proceedings in which:

- (a) they have served as a lawyer in the matter in controversy, or a lawyer with whom they previously practiced law served during such association as a lawyer concerning the matter; or
- (b) they know that, individually or as a fiduciary, they have an interest in the subject matter in controversy; or
- (c) either of the parties may be related to them by affinity or consanguinity within the third degree.

(2) **Recusal.** A judge shall recuse himself in any proceeding in which:

- (a) his impartiality might reasonably be questioned;

(b) he has a personal bias or prejudice concerning the subject matter or a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(c) he or a lawyer with whom he previously practiced law has been a material witness concerning it;

(d) he participated as counsel, adviser or material witness in the matter in controversy, or expressed an opinion concerning the merits of it, while acting as an attorney in government service;

(e) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(f) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iii) is to the judge's knowledge likely to be a material witness in the proceeding.

(g) he or his spouse, or a person within the first degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding.

(3) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(4) In this rule:

(a) "proceeding" includes pretrial, trial, or other stages of litigation;

(b) the degree of relationship is calculated according to the civil law system;

(c) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(d) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities;

(v) an interest as a taxpayer or utility ratepayer, or any similar interest, is not a "financial interest" unless the outcome of the proceeding could substantially affect the liability of the judge or a person related to him within the third degree more than other judges.

(5) The parties to a proceeding may waive any ground for recusal after it is fully disclosed on the record.

(6) If a judge does not discover that he is recused under subparagraphs (2)(e) or (2)(f)(iii) until after he has devoted substantial time to the matter, he is not required to recuse himself if he or the person related to him divests himself of the interest that would otherwise require recusal.

A good background article on recusal is by former Texarkana Court of Appeals Justice Charles Bleil and Carol King, *Focus on Judicial Recusal: a Clearing Picture*, 25 TEX. TECH. L. REV. 773 (1994).

V. Recusal Due to Representing the Judge in a Legal Matter. The Supreme Court Advisory Committee (SCAC) has forwarded to the Texas Supreme Court for review a proposed amendment to TEX. R. CIV. P. 18b that includes the following ground for recusal:

(1) Disqualification and Recusal of Judges

(a) Grounds for Disqualification. A Judge is disqualified in the following circumstances:

* * *

(9) a lawyer in the proceeding, or the lawyer's law firm, is representing the judge, or judge's spouse or minor child, in an ongoing legal proceeding other than a class action, except for legal work by a government attorney in his/her official capacity.

A footnote to paragraph (9) of the proposed rule says that "Paragraph (9) is based on The Guide to Judiciary Policies and Procedures, Vol. 5, Section 3.6-2, published by the Administrator's Office of the United States Courts."

A few points about proposed paragraph (9):

- C it is triggered by an attorney or anyone in his or her law firm.
- C it applies to representation of the judge or his/her spouse, or minor child.
- C it applies to representation in an ongoing legal proceeding other than a class action. Presumably representation of a judge in an out-of-court transaction would not be covered, such as a

purchase or sale of real estate, the writing of a will, etc. since those are not legal "proceedings." It is also arguable that merely giving advice to the judge, even as to a legal proceeding, may not be "representation." The "ongoing" component means that the rule would not apply after the legal proceeding is concluded.

- C it does not apply to the attorney general or his assistants, or to the district or county attorney or their assistants, when they are representing the judge only in his/her official capacity as judge.

The practical import of proposed paragraph (9) is that a family lawyer cannot appear in court before a judge whom the lawyer is representing in an ongoing legal proceeding, such as a divorce, personal injury suit (other than class action), neighbor dispute, etc. Recusal applies if the lawyer is representing the judge's spouse in a divorce. However, if you are suing the judge on behalf of anyone but a spouse or minor child, this ground for recusal does not apply.

If subdivision (9) is adopted, some family lawyers may be unwilling to agree to accept representation a judge before whom the lawyer appears, since it would lead to recusal of the judge in the lawyer's other cases in that court. Consider Texas Disciplinary Rule of Professional Conduct 1.06(b)(2), which prohibits a lawyer from representing a person if the representation of that person . . . "reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another client . . ." Comment 4 to the Rule says that "[l]oyalty to a client is impaired . . . in any situation when a lawyer may not be able to consider, recommend, or carry out an appropriate course of action for one client because of the lawyer's . . . responsibilities to others. The conflict in effect forecloses alternatives that would otherwise be available to the client." Rule 1.06(b)(2) would stop the lawyer from accepting employment by a new client when representation of the new client would be impaired by duties to an existing judge-client. Arguably the fact that the judge would be recused from the new client's case would be an impairment in representing the new client, although circumstances can be imagined when it would actually enhance the position of the new client to be able to recuse the judge from the new client's case. Although these ethics standards do not precisely apply where considering the impact of taking on the judge as a client while already representing clients in that court, an existing client might have cause to complain if recusal of the judge is forced upon the existing client by the lawyer's decision to represent the judge. The impact of proposed subparagraph (9) could be substantial in a large law firm, where one lawyer's decision to

represent the judge in an ongoing legal proceeding would require recusal in dozens of cases, if not more.

VI. Recusal Due to Campaign Contributions.

Texas courts have rejected the argument that campaign contributions might create a bias that would warrant recusal. *Aguilar v. Anderson*, 855 S.W.2d 799 (Tex. App.--El Paso 1993, writ denied); *J-IV Investments v. David Lynn Machine, Inc.*, 784 S.W.2d 106, 107 (Tex. App.--Dallas 1990, no writ); *Rocha v. Ahmad*, 662 S.W.2d 77, 78 (Tex. App.--San Antonio 1983, no writ). However, the Supreme Court Advisory Committee (SCAC) has forwarded to the Texas Supreme Court for review a proposed amendment to TEX. R. CIV. P. 18b that includes the following grounds for recusal. The grounds apply when campaign contributions or direct campaign expenditures are made in excess of the limits set in the Election Code.

(1) Disqualification and Recusal of Judges

(a) Grounds for Disqualification.(2) A Judge is disqualified in the following circumstances:

* * *

(10) the judge has accepted a campaign contribution, as defined in § 251.001(3) of the Election Code, which exceeds the limits in § 253.155(b) or § 253.157(a) of the Election Code, made by or on behalf of a party, by a lawyer or a law firm representing a party, or by a member of that law firm, as defined in § 253.157(e) of the Election Code, unless the excessive contribution is returned in accordance with § 253.155(e) of the Election Code. This ground for recusal arises at the time the excessive contribution is accepted and extends for the term of office for which the contribution was made.

(11) a direct campaign expenditure as defined in § 251.001(7) of the Election Code which exceeds the limits in § 253.061(1) or 253.062(a) of the Election Code was made, for the benefit of the judge, when a candidate, by or on behalf of a party, by a lawyer or law firm representing a party, or by a member of that law firm as defined in § 253.157(e) of the Election Code. This ground for recusal arises at the time the excessive direct campaign expenditure occurs and extends for the

term of office for which the direct campaign expenditure was made.

These two grounds for recusal were taken from recommendations of the Judicial Campaign Finance Study Committee which were evaluated and edited by the SCAC at the request of the Supreme Court. See *Opinion and Order Implementing Recommendations of the Supreme Court Judicial Campaign Finance Study Committee*, 62 TEX. B.J. 946 (October, 1999), which includes the following recommendation and disposition by the Supreme Court:

2. Recommendation B: Promulgate rules extending and strengthening the contribution limits of the Judicial Campaign Fairness Act. The Committee proposed new procedural rules requiring judges to recuse themselves from any case in which a party, attorney, or certain relations or affiliates have made contributions or direct expenditures exceeding the contribution limits of the Judicial Campaign Fairness Act. [FN9] The Committee also recommended amending the Code of Judicial Conduct to make failure to recuse in accordance with the rule or violations of the Act subject to judicial discipline. [FN10]

The Court accepts the Committee's recommendation, and refers the recusal proposal to the Supreme Court Advisory Committee on the Rules of Procedure for assistance in drafting appropriate amendments to Rule 18a or 18b, Texas Rules of Civil Procedure, and Rule 16, Texas Rules of Appellate Procedure.

In the Supreme Court of Texas Misc. Docket No. 99-9112

Paragraph (10) applies to a "campaign contribution," which is defined as "a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution." TEX. ELEC. CODE § 251.001(3). A campaign contribution will be the basis for recusal if it exceeds the limits set out in TEX. ELEC. CODE § 253.155(b), which provides:

§ 253.155. Contribution Limits

(a) Except as provided by Subsection (c), a judicial candidate or officeholder may not knowingly accept political contributions

from a person that in the aggregate exceed the limits prescribed by Subsection (b) in connection with each election in which the person is involved.

(b) The contribution limits are:

(1) for a statewide judicial office, \$5,000; or

(2) for any other judicial office:

(A) \$1,000, if the population of the judicial district is less than 250,000;

(B) \$2,500, if the population of the judicial district is 250,000 to one million; or

(C) \$5,000, if the population of the judicial district is more than one million.

(c) This section does not apply to a political contribution made by a general-purpose committee.

(d) For purposes of this section, a contribution by a law firm whose members are each members of a second law firm is considered to be a contribution by the law firm that has members other than the members the firms have in common.

(e) A person who receives a political contribution that violates Subsection (a) shall return the contribution to the contributor not later than the later of:

(1) the last day of the reporting period in which the contribution is received; or

(2) the fifth day after the date the contribution is received.

(f) A person who violates this section is liable for a civil penalty not to exceed three times the amount of the political contributions accepted in violation of this section.

As used in Section 253.155, a “general-purpose committee” means a political committee that has among its principal purposes:

(A) supporting or opposing:

(i) two or more candidates who are unidentified or are seeking offices that are unknown; or

(ii) one or more measures that are unidentified; or

(B) assisting two or more officeholders who are unidentified.

Texas Election Code § 251.001(14) (“Definitions”).

A campaign contribution will also be the basis for recusal if it exceeds the limits set in TEX. ELEC. CODE § 253.257, which provides:

§ 253.157. Limit on Contribution by Law Firm or Member or General-Purpose Committee of Law Firm

(a) A judicial candidate or officeholder or a specific-purpose committee for supporting or opposing a judicial candidate may not accept a political contribution in excess of \$50 from a person if:

(1) the person is a law firm, a member of a law firm, or a general-purpose committee established or controlled by a law firm; and

(2) the contribution when aggregated with all political contributions accepted by the candidate, officeholder, or committee from the law firm, other members of the law firm, or a general-purpose committee established or controlled by the law firm in connection with the election would exceed six times the applicable contribution limit under Section 253.155.

(b) A person who receives a political contribution that violates Subsection (a) shall return the contribution to the contributor not later than the later of:

(1) the last day of the reporting period in which the contribution is received; or

(2) the fifth day after the date the contribution is received.

(c) A person who fails to return a political contribution as required by Subsection (b) is liable for a civil penalty not to exceed three times the total amount of political contributions accepted from the law firm, members

of the law firm, or general-purpose committees established or controlled by the law firm in connection with the election.

(d) For purposes of this section, a general-purpose committee is established or controlled by a law firm if the committee is established or controlled by members of the law firm.

(e) In this section:

(1) "Law firm" means a partnership, limited liability partnership, or professional corporation organized for the practice of law.

(2) "Member" means a partner, associate, shareholder, employee, or person designated "of counsel" or "of the firm".

As used in paragraph (11), a "direct campaign expenditure" means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. Texas Election Code §251.01(8) ("Definitions").

The Election Code has an aggregation rule for law firms and PACs of law firms:

§ 253.157. Limit on Contribution by Law Firm or Member or General-Purpose Committee of Law Firm

(a) A judicial candidate or officeholder or a specific-purpose committee for supporting or opposing a judicial candidate may not accept a political contribution in excess of \$50 from a person if:

(1) the person is a law firm, a member of a law firm, or a general-purpose committee established or controlled by a law firm; and

(2) the contribution when aggregated with all political contributions accepted by the candidate, officeholder, or committee from the law firm, other members of the law firm, or a general-purpose committee established or controlled by the law firm in connection with the election would exceed six times the applicable contribution limit under Section 253.155.

There is also an attribution rule for spouses of lawyers and minor children:

§ 253.158. Contribution by Spouse or Child Considered to be Contribution by Individual

(a) For purposes of Sections 253.155 and 253.157, a contribution by the spouse or child of an individual is considered to be a contribution by the individual.

(b) In this section, "child" means a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

VII. Procedure for Recusal. The procedure for filing a motion to recuse is governed by TEX. R. CIV. P. 18a.

A. Rule 18a. TEX. R. CIV. P. 18a provides:

Rule 18a. Recusal or Disqualification of Judges

(a) At least ten days before the date set for trial or other hearing in any court other than the Supreme Court, the Court of Criminal Appeals or the court of appeals, any party may file with the clerk of the court a motion stating grounds why the judge before whom the case is pending should not sit in the case. The grounds may include any disability of the judge to sit in the case. The motion shall be verified and must state with particularity the grounds why the judge before whom the case is pending should not sit. The motion shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence provided that facts may be stated upon information and belief if the grounds of such belief are specifically stated.

(b) On the day the motion is filed, copies shall be served on all other parties or their counsel of record, together with a notice that movant expects the motion to be presented to the judge three days after the filing of such motion unless otherwise ordered by the judge. Any other party may file with the clerk an opposing or concurring statement at any time before the motion is heard.

(c) Prior to any further proceedings in the case, the judge shall either recuse himself

or request the presiding judge of the administrative judicial district to assign a judge to hear such motion. If the judge recuses himself, he shall enter an order of recusal and request the presiding judge of the administrative judicial district to assign another judge to sit, and shall make no further orders and shall take no further action in the case except for good cause stated in the order in which such action is taken.

(d) If the judge declines to recuse himself, he shall forward to the presiding judge of the administrative judicial district, in either original form or certified copy, an order of referral, the motion, and all opposing and concurring statements. Except for good cause stated in the order in which further action is taken, the judge shall make no further orders and shall take no further action in the case after filing of the motion and prior to a hearing on the motion. The presiding judge of the administrative judicial district shall immediately set a hearing before himself or some other judge designated by him, shall cause notice of such hearing to be given to all parties or their counsel, and shall make such other orders including orders on interim or ancillary relief in the pending cause as justice may require.

(e) If within ten days of the date set for trial or other hearing a judge is assigned to a case, the motion shall be filed at the earliest practicable time prior to the commencement of the trial or other hearing.

(f) If the motion is denied, it may be reviewed for abuse of discretion on appeal from the final judgment. If the motion is granted, the order shall not be reviewable, and the presiding judge shall assign another judge to sit in the case.

(g) The Chief Justice of the Supreme Court may also appoint and assign judges in conformity with this rule and pursuant to statute.

(h) If a party files a motion to recuse under this rule and it is determined by the presiding judge or the judge designated by him at the hearing and on motion of the opposite party, that the motion to recuse is brought solely for the purpose of delay and without sufficient cause, the judge hearing the motion may, in the interest of justice, im-

pose any sanction authorized by Rule 215(2)(b).

B. Some Points to Remember About Disqualification/Recusal Procedure.

1. Timing. TRCP 18a provides that a motion to disqualify or recuse must be filed at least ten days prior to the date set for trial or other hearing. The ten day requirement cannot be applied to grounds for disqualification, because disqualification is automatic and makes actions by the judge void. Some argue that the ten day rule applies to any hearing in the case, so that a party could still move to recuse a judge at least ten days prior to trial even if there have already been preliminary hearings before that judge. However, *Enterprise-Laredo Assocs. v. Hachar's, Inc.*, 839 S.W.2d 822 (Tex. App.-San Antonio 1992), writ denied, 843 S.W.2d 476 (Tex. 1992) (per curiam), upheld the imposition of sanctions because the parties seeking recusal were aware of grounds for possible recusal long before the motion to recuse was filed.

TRCP 18a(e) provides that, if the judge is assigned to the case within ten days of the date set for trial, the motion must be filed at the earliest practical time prior to commencement of trial. The ten-day requirement does not apply if the movant does not receive ten days notice of the hearing from which he seeks to recuse the judge. *Metzger v. Sebek*, 892 S.W.2d 20, 49 (Tex. App.--Houston [1st Dist.] 1994, writ denied). Also, one case has held that the ten-day requirement does not apply where a party cannot know the basis of the recusal until after a motion for recusal is no longer timely. *Keene Corp. v. Rogers*, 863 S.W.2d 168, 171 (Tex. App.-- Texarkana 1993, no writ).

2. Notice of the Motion. TRCP18a(b) provides that the movant must give notice to other parties or counsel that the movant expects the motion to disqualify or recuse to be presented within three days. This proviso does not require that a hearing be had within three days, and it doesn't obviate the requirement under TRCP 21 of service and three days' notice of any hearing. Ordinarily a trial judge should wait at least three days before deciding on the recusal to allow other parties to file responses, although if recusal is unquestionably required perhaps no delay is warranted.

3. Must Decide Prior to Other Proceedings. Under TRCP 18(c), once a motion to disqualify or recuse is filed the court must decide the motion prior to any further proceedings in the case. If the judge disqualifies herself or himself, s/he cannot take any further action in the case. If the judge recuses, s/he can take no further action in the case *except for good cause stated in the order*. If the judge refuses to

recuse, s/he cannot make no further orders or take further actions *except for good cause stated in the order in which further action is taken*. TRCP 18a(d).

4. Sanctions. The motion to disqualify or recuse must be verified and made on personal knowledge and set forth admissible evidence, although statements can be made upon information and belief if the grounds for such belief are stated. TRCP 18a(a). If a motion to recuse is denied, the judge who hears the recusal can, upon the request of the opposing party and after the hearing, impose any sanction under TRCP 215(2)(b), if s/he finds that the motion to recuse was filed solely for the purpose of delay and without sufficient cause.

C. Where to Get Campaign Contribution Information. Information relating to monetary contributions to judges is contained in campaign finance reports which are filed as follows:

Judges sitting in one county only are required to file their reports both locally, with the County Clerk or County Elections Administrator, and with the Texas Ethics Commission. However, reports prepared prior to January, 2000, were not required to be filed with the Texas Ethics Commission, so they would only be available locally.

Judges sitting in multiple counties are required to file their reports with only the Texas Ethics Commission.

You can get a copy of a campaign finance report, by writing to the Texas Ethics Commission, Post Office Box 12070, Austin, Texas 78711-2070, Attention: Disclosure Filing Section. However, you must pay for the report in advance. To determine the cost of the report, you should call the Texas Ethics Commission at 1/800/325-8506, or from Austin dial 512/463-5800.

The Texas Ethics Commission has a website, www.ethics.state.tx.us. Some reports may be on the website.