

MEMORANDUM

TO: Supreme Court Advisory Committee
FROM: Judge David Peeples
RE: Revisions to Rules 18a and 18b
DATE: September 23, 2009

I. Revise Rule 18b in response to *Caperton*?

The Supreme Court held in *Caperton* that there can be such outrageously high campaign contributions on behalf of a judge that the judge must, as a matter of due process, recuse when the contributor's case is considered. Should Rule 18b be modified in light of *Caperton*?

For two reasons, the nine regional presiding judges feel that *Caperton* revisions to the Texas recusal system are not needed, at least for trial courts. (We express no opinion on the need to modify TRAP 16, which channels recusal motions to the other justices on the appellate court.)

First, under Rule 18a a recusal motion immediately stops the respondent judge from dealing with the case until a second judge, assigned by someone else, has decided the motion. By contrast, in *Caperton* the West Virginia system allowed the respondent judge to decide his own motion, and then to continue sitting on the case after he denied it!

Second, the current provision in Rule 18b allowing recusal of a judge whose "impartiality might reasonably be questioned" is adequate because it authorizes the judge who hears the recusal motion to recuse a respondent judge who has received large contributions from a litigant or lawyer. The presiding judges doubt that a more specific contribution provision will produce a net gain over current law.

II. Procedural Improvements to Rule 18a.

The presiding judges urge the committee to strengthen our trial court recusal procedures with the following revisions to Rule 18a:

- (1) Express statements in the rule that: (a) the motion must state details (not just general allegations that a judge's "impartiality might reasonably be questioned") [lines 14-15], and (b) a judge's rulings in the case cannot be a basis for recusal [lines 15-16];
- (2) Express authority for the presiding judge to deny, without a hearing, motions that are untimely or legally insufficient (general allegations of unfairness, without details; complaints about rulings) [lines 43-44].
- (3) A bulletproof presiding judge, who is not subject to recusal on the motion itself [lines 59-61];
- (4) Stronger sanctions provisions [lines 68-72].