

## Groups want recusal system put in place

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If the public doesn't believe judges can keep their campaign contributions and court decisions separate, "we may as well throw out our judicial robes," said Jonathan Lippman, chief judge of the New York State Unified Court System.

The idea of remaining independent might be a no-brainer to judges, but Lippman said the public needs to have confidence in order for the system to work properly. And after a pair of recent U.S. Supreme Court cases threw the issue into the national spotlight, he said reform "is more urgent today than ever before."

Lippman spoke about the need for standards on judicial recusal and campaign contribution disclosure, as well as a disqualification rule his court system adopted last year, at a panel discussion Wednesday at The Union League Club of Chicago.

Justice At Stake, a Washington D.C.-based organization focused on keeping courts fair and impartial, sponsored the event along with a handful of local groups, including the Illinois Campaign for Political Reform and the Chicago Appleseed Fund for Justice.

Adam Skaggs, senior counsel for the Brennan Center for Justice's democracy program in New York, said the Supreme Court's 2009 decision in *Caperton v. Massey* gave state courts "a clear sign" that they needed to create their own recusal rules.

"The good news is that 11 states have done something," Skaggs said. "The bad news is that some went in the opposite direction ... and the vast majority have done nothing."

The court in *Caperton* ruled that the "serious risk of actual bias" required a West Virginia judge to recuse himself from the appeal of a \$50 million verdict.

The defendant in the case sought recusal after learning the plaintiff gave millions of dollars of support to the judge's campaign. The judge refused and cast the deciding vote that overturned the verdict in favor of the plaintiff.

This case, Skaggs said, highlighted the question over whether campaign cash can influence judges' decisions in the courtroom and spurred calls for courts to create recusal standards to address these concerns.

Out of the 11 states that adopted disqualification rules after *Caperton*, Skaggs said that the standards set by Georgia and Tennessee appear to be the most recent and comprehensive.

"They acknowledge that spending can take many forms," Skaggs said.

Both states require recusal or disqualification when a judge receives an amount of contributions or support that would create a question of impartiality. Other states' rules only require recusal when a party or lawyer makes contributions that exceed a certain amount in a specific period of time.

In New York, Lippman said, the court system created a disqualification rule that prevents elected judges from hearing cases involving parties or lawyers who contributed \$2,500 or more to their campaigns.

"We treat it as an administrative rule, not a recusal issue," Lippman said, explaining that court administrators handle the matter so judges don't have to get involved.

Since implementing the rule last year, Lippman said, administrators reassigned about a dozen cases. He urged court leaders to be bold in taking the step of adopting recusal rules.

"It's simple. It's easy. There is no agonizing for judges and lawyers," he said of New York's disqualification rule. "It is what it is ... no one is complaining because we're just doing it."

Cynthia Gray, director of the Center for Judicial Ethics at the American Judicature Society in Chicago, said Illinois' high court has not created a post- *Caperton* recusal rule.

She said a situation in Madison County spurred a pair of lawmakers to propose legislation to force the state Supreme Court to establish judicial disclosure rules. That measure, House Bill 4098, remains in the Rules Committee, where it is likely to die when the current legislative session ends.

Peter Bennett, chairman of the American Bar Association Standing Committee on Judicial Independence, said his committee started looking into recusal matters several years ago as more money began to make its way into judicial races.

After withdrawing and rewriting its recommendations over the years, the group convinced the ABA House of Delegates to approve a resolution last year that urges states to create clear judicial disqualification determinations.

He said his committee wants to help states implement these rules, noting that "there is no one size fits all solution."

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