



Ann Pfau
Chief Administrative Judge

November 4, 2011

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New York, N.Y. 10004
(212) 428-2100

To: Administrative Judges
From: Ann Pfau *AP*
Subject: Case Assignments and Judicial Campaign Finance – Part 151

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As we have discussed, 22 NYCRR Part 151 (attached) restricts the assignment of cases where participating litigants, counsel or firms made significant campaign contributions to the assigned judge, for a period of two years from the date the State Board of Elections first publishes a record of the contribution. This memorandum provides a broad overview of the new rule and its implementation.

I. Overview of Part 151

A. Basic rule

Pursuant to Part 151, cases will not be newly assigned or reassigned to any judge for whom the case raises a “campaign contribution conflict.” A campaign contribution conflict exists under the following circumstances.

Individual contribution Under Rule 151.1(B)(1), a conflict arises when a judge receives a single contribution of \$2,500 or more from:

- (i) an attorney appearing or listed as counsel of record, or serving as co-counsel or special counsel to such attorney;
- (ii) the law firm of such attorneys; or
- (iii) a party in the matter.

Collective contributions Under Rule 151.1(B)(2), a conflict arises when a judge receives \$3,500 or more in the aggregate from any or all of the following:

- (i) an attorney appearing or listed as counsel of record, or serving as co-counsel or special counsel to such attorney;
- (ii) the law firm(s) of such attorneys; or
- (iii) a client(s) of the attorney(s) in the matter.

B. Exceptions

A case may be assigned to a judge despite a Part 151 campaign contribution conflict in the event of emergency, where required by the rule of necessity, or where the interests of justice require. Moreover, as discussed below, a non-contributing party may also waive the conflict and accept the assignment.

C. Conflict periods

A campaign contribution conflict period is measured from the date that the State Board of Elections ("BOE") first publishes a record of the contribution giving rise to the conflict. Contributions reported as received before July 15, 2011 will not be counted toward conflict thresholds. See Rule 151.1(E).

A campaign contribution conflict lasts for two years from the date the BOE report the contributions giving rise to the conflict. If the candidate is not yet a sitting judge, the conflict period lasts for two years after the candidate assumes judicial office. See Rule 151.1(B)(3). If a contributor makes multiple contributions to a campaign giving rise to a conflict under the rule, the conflict period is extended to last two years after the BOE reports the final such contribution.¹

D. Part 151 and recusal

Part 151 is an assignment rule, not a recusal rule. Nothing in Part 151 abridges the right of any party to move for recusal of a judge at any time. Nor does the new rule change the procedure or standards for such an application. See Rule 151.1(A)(3). Finally Part 151 neither increases or decreases the ethical obligations of a judge or judicial candidate under the Rules Governing Judicial Conduct (Part 100).

E. No collateral consequences

In cases where an assignment is made to a judge erroneously notwithstanding a conflict under Part 151, that assignment remains valid. Moreover, Part 151 creates no right, remedy or cause of action for any party or counsel. See Rule 151.1(A)(2).

II. Implementation

A. Information about campaign contributions

As discussed above, assessments of campaign contribution conflicts will be based on information published by the New York State Board of Elections. Information about campaign contributions derived from BOE data will also be posted on the court system's website.

In addition, my office will notify you as to those judges in your district who may be subject to a campaign contribution conflict and provide specific information about the contributions made to each judge, including the names of the contributors, whether the contributors are attorneys, the amount of the contribution, the date of the report of the contribution, and the date that the conflict period expires. These notices will be updated periodically.¹

B. Determination of campaign contribution conflicts

The method for matching information about contributions with the names of attorney's and parties in particular cases will vary depending upon the court, the number of contributors, and other factors. When a judge is identified as having received campaign contributions, we will work with your office to determine the best method for matching contributions and cases in the affected court.

Also note, in this regard, that there can be no uniform statewide rule as to what happens when there is a "hit" between a contributor and a case. Again, we will work with you to determine the most appropriate protocol in light of specific local factors, such as the court type, and judge's assignment (e.g., TAP or IAS part).

C. Waiver

Upon ascertaining that a case is about to be assigned to a judge in a manner that would create a campaign contribution conflict, the clerk's office must notify counsel to non-conflicted parties in the matter about that proposed assignment, and provide them with a reasonable opportunity to waive the conflict. This waiver process is to be handled administratively, without the involvement or knowledge of the affected judge. The precise procedure for such notification will vary in different courts throughout the State and will have to be tailored to local needs; we will work with you to develop appropriate protocols for each of your courts. But for all cases, the waiver must be in writing, and a standard form and an explanatory notice have been developed for this purpose (copy attached).

¹ Note that there are no imputed contributions under Part 151. Therefore, for purposes of calculating the \$2,500 threshold for an individual campaign contribution conflict, an attorney's contribution will not be imputed to the attorney's firm. Likewise, the contributions of multiple attorneys at a firm not serving as counsel, co-counsel or special counsel will not be aggregated or imputed to the firm. A corporate contribution will not be imputed to a shareholder or officer. A personal contribution will not be imputed to any other person or the contributor's employer. For purposes of calculating the \$3,500 threshold for a collective campaign contribution conflict, contributions from listed contributors will be aggregated, but contributions by other persons and entities (e.g. family members, co-workers, employers, subsidiaries, etc.) will not be imputed and aggregated.

D. Reassignment

Where an assignment would result in a conflict that has not been waived, the case should be administratively reassigned to a different judge, and the affected judge should not be involved in the reassignment process or decision. Once again, there is no single procedure for identifying conflicts and for reassigning cases that will work statewide. As a judge in your district or court is identified as being potentially subject to a campaign contribution conflict, we will work with your office to develop a process that works best in light of particular local factors (e.g., type of court, nature of judicial assignment).

* * *

I know that implementation of this new rule will be a challenge, especially over next several months. We will work with you and your staffs to make this transition as smooth as possible. As we progress further in implementation, I will keep you updated.

If you have any questions about the rule or its implementation, please feel free to contact me. Ronald Younkens (212-428-2120 or RYOUNKIN@courts.state.ny.us), Paul Lewis (212-428-2120, PLEWIS@courts.state.ny.us), or John McConnell (212-428-2160, JWMCCONN@courts.state.ny.us).

Thank you for your assistance.

cc. Hon. Fern A. Fisher
Hon. Michael V. Cocco
Ronald Younkens
John McConnell
New York City Surrogates
Paul Lewis
Maria Logus
Maria Barrington
District Executives
New York City Chief Clerks

**ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

Pursuant to the powers vested in me, and with the approval of the Administrative Board of the Courts, I hereby add, effective July 15, 2011, Part 151 of the Rules of the Chief Administrator, addressing the assignment of cases involving contributors to judicial campaigns, to read as follows:

* * *

**PART 151. RULES GOVERNING THE ASSIGNMENT OF CASES
INVOLVING CONTRIBUTORS TO JUDICIAL CAMPAIGNS**

151.1 Assignments in Cases Involving Contributors to Judicial Campaigns

(A) (1) No matter shall be assigned to a judge, other than in an emergency, or as dictated by the rule of necessity, or when the interests of justice otherwise require, if such assignment would give rise to a campaign contribution conflict as defined in section (B) of this Part.

(2) An assignment in derogation of this Part, due to administrative error or oversight, shall not (a) diminish the authority of the assigned judge; (b) give rise to any right, claim or cause of action; (c) impose any additional ethical obligation upon the assigned judge; or (d) diminish the assigned judge's obligation to consider recusal in light of campaign contributions.

(3) Nothing in this Part shall abridge the right of a party to move for recusal of an assigned judge at any time, or limit the arguments or evidence that may be marshaled for or against such recusal motion (see, e.g., §§ C[1] and D of this Part).

(B) (1) Individual Contributions: For purposes of this Part, a campaign contribution conflict shall exist when –

(a) an attorney appearing as counsel of record in a matter before a judge, or appearing in the matter as co-counsel or special counsel to such counsel of record,
or

(b) such attorneys' law firm or firms, or

(c) a party in the matter –

individually has contributed \$2,500 or more to such judge's campaign for elective office during the window period defined in Part 100.0(Q) of these Rules.

(2) Collective Contributions: For purposes of this Part, a campaign contribution conflict shall exist when the sum of all contributions to a judge's campaign for elective office made during the window period defined in Part 100.0(Q) of these Rules by –

(a) an attorney appearing as counsel of record in a matter before such judge, and attorneys appearing in the matter as co-counsel or special counsel to such counsel of record, and

(b) each such attorneys' law firm or firms, and

(c) each client of each such attorney in the matter –

totals \$3,500 or more.

(3) Term of Conflict (Conflict Period):

(a) A contribution shall be considered for conflicts purposes under this Part for a period of two years commencing on the day that the State Board of Elections first publishes the report of such contribution; provided, that if the candidate receiving such contribution is not a judge at the time of such report, then such two-year period shall commence on the day that he or she first assumes judicial office.

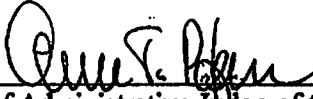
(b) If a person or entity makes more than one contribution to a candidate during such candidate's window period, as defined in Part 100.0(Q) of these Rules, then for conflicts purposes hereunder such contributions shall be totaled and treated as if made as a single contribution. In such cases, the conflict period for such contributions shall be extended to two years following the day on which the State Board of Elections publishes the report of the last of such contributions (unless paragraph (a) of this subsection requires a later date, in which case such later date shall govern).

(C) The Chief Administrator of the Courts shall:

(1) publish periodically a listing or database of contributions and contributors to judicial candidates, as disclosed by public filings, in a manner designed to assist the identification of campaign contribution conflicts under this Part, as well as contributions which, while not causing a campaign contribution conflict under this Part, may be pertinent to a motion to recuse;

(2) establish a procedure whereby parties may waive application of this Rule and permit assignment of a judge affected by a campaign contribution conflict;

- (3) provide for local administrative resolution of issues arising under this Part by local court clerks and administrative judges, with minimal involvement by assigned judges; and
- (4) with advice and consent of the Administrative Board of the Courts, take such further steps as may be necessary to give effect to this Part.
- (D) Notwithstanding any provision of this Part, a judge shall be mindful of the ethical responsibility to consider the propriety of recusal in any proceeding in which the judge's impartiality reasonably might be questioned in consequence of campaign contributions.
- (E) This Part shall take effect on July 15, 2011, and shall apply to all campaign contributions first reported as received on or after such date.



Chief Administrative Judge of the Courts

Dated: June 27, 2011

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Notice of Campaign Contribution Conflict and Option to Waive Conflict

In a case in which you are a party or counsel, a campaign contribution conflict has been found to exist between another party and the judge proposed for assignment or reassignment of the case. That conflict is described in the attached waiver form. This notice explain the rules governing campaign conflicts and describes your rights and responsibilities in this situation.

* * *

A New York court rule (22 NYCRR Part 151; attached) restricts the assignment of cases where litigants, counsel or firms made significant campaign contributions to the assigned judge, for a period of two years from the date the State Board of Elections first publishes a record of the contribution. The rule provides that, in situations where such conflicts exist, the case may be assigned to the conflicted judge only if all other parties in the case voluntarily consent. Under the rule, the judge will not be informed of the conflict, and will not be informed whether any or all parties have consented, or declined to consent, to waiver.

Parties who consent to waive a conflict must fill out and return a waiver form to the clerk of the court. If the form is not returned within twenty days of mailing by the court, the clerk will assume that the party has not consented to a waiver, and will have the case reassigned accordingly.

As described on the attached form, a conflict has been found in your case. If you wish to waive the conflict, please sign and return the form to the clerk's office within twenty days of the date of this letter. If you do not wish to waive the conflict, do nothing, and the matter will be reassigned according to the rule.

If you have any questions, feel free to contact the clerk's office at the telephone number listed on the waiver form.

22 NYCRR PART 151

RULES GOVERNING THE ASSIGNMENT OF CASES INVOLVING
CONTRIBUTORS TO JUDICIAL CAMPAIGNS

WAIVER

I/We have been notified that the parties or counsel representing
(circle one) Plaintiff Petitioner Defendant Respondent Other _____
(name) _____ in the action entitled
(case) _____
have contributed \$2500.00 or more individually, or \$3500.00 or more collectively,
to the election campaign of Judge/Justice _____
within the last two years, thereby creating a campaign contribution conflict as
defined in 22 NYCRR § 151(B).

After due consideration, I/we hereby waive any objection thereto in
accordance with 22 NYCRR § 151(C)(2), and consent to the assignment of
Judge/Justice _____ in this case.

Dated: _____

Attorney (or Self-Represented Party)
Print Name:

Court Information

Court:

Address:

Telephone:

Fax:

Email:

PART 151. RULES GOVERNING THE ASSIGNMENT OF CASES INVOLVING CONTRIBUTORS TO JUDICIAL CAMPAIGNS

151.1 Assignments in Cases Involving Contributors to Judicial Campaigns

- (A) (1) No matter shall be assigned to a judge, other than in an emergency, or as dictated by the rule of necessity, or when the interests of justice otherwise require, if such assignment would give rise to a campaign contribution conflict as defined in section (B) of this Part.
- (2) An assignment in derogation of this Part, due to administrative error or oversight, shall not (a) diminish the authority of the assigned judge; (b) give rise to any right, claim or cause of action; (c) impose any additional ethical obligation upon the assigned judge; or (d) diminish the assigned judge's obligation to consider recusal in light of campaign contributions.
- (3) Nothing in this Part shall abridge the right of a party to move for recusal of an assigned judge at any time, or limit the arguments or evidence that may be marshaled for or against such recusal motion (see, e.g., §§ C[1] and D of this Part).
- (B) (1) Individual Contributions: For purposes of this Part, a campaign contribution conflict shall exist when –
- (a) an attorney appearing as counsel of record in a matter before a judge, or appearing in the matter as co-counsel or special counsel to such counsel of record, or
 - (b) such attorneys' law firm or firms, or
 - (c) a party in the matter –
- individually has contributed \$2,500 or more to such judge's campaign for elective office during the window period defined in Part 100.0(Q) of these Rules.
- (2) Collective Contributions: For purposes of this Part, a campaign contribution conflict shall exist when the sum of all contributions to a judge's campaign for elective office made during the window period defined in Part 100.0(Q) of these Rules by –
- (a) an attorney appearing as counsel of record in a matter before such judge, and attorneys appearing in the matter as co-counsel or special counsel to such counsel of record, and
 - (b) each such attorneys' law firm or firms, and
 - (c) each client of each such attorney in the matter –
- totals \$3,500 or more.
- (3) Term of Conflict (Conflict Period):
- (a) A contribution shall be considered for conflicts purposes under this Part for a period of two years commencing on the day that the State Board of Elections first publishes the report of such contribution; provided, that if the candidate receiving such contribution is not a judge at the time of such report, then such two-year period shall commence on the day that he or she first assumes judicial office.
 - (b) If a person or entity makes more than one contribution to a candidate during such candidate's window period, as defined in Part 100.0(Q) of these Rules, then for conflicts purposes hereunder such contributions shall be totaled and treated as if made as a single contribution. In such cases, the conflict period for such contributions shall be extended to two years following the day on which the State Board of Elections publishes the report of the last of such contributions (unless paragraph (a) of this subsection requires a later date, in which case such later date shall govern).
- (C) The Chief Administrator of the Courts shall:
- (1) publish periodically a listing or database of contributions and contributors to judicial candidates, as disclosed by public filings, in a manner designed to assist the identification of campaign contribution conflicts under this Part, as well as contributions which, while not causing a campaign contribution conflict under this Part, may be pertinent to a motion to recuse;
 - (2) establish a procedure whereby parties may waive application of this Rule and permit assignment of a judge affected by a campaign contribution conflict;
 - (3) provide for local administrative resolution of issues arising under this Part by local court clerks and administrative judges, with minimal involvement by assigned judges; and
 - (4) with advice and consent of the Administrative Board of the Courts, take such further steps as may be necessary to give effect to this Part.
- (D) Notwithstanding any provision of this Part, a judge shall be mindful of the ethical responsibility to consider the propriety of recusal in any proceeding in which the judge's impartiality reasonably might be questioned in consequence of campaign contributions.
- (E) This Part shall take effect on July 15, 2011, and shall apply to all campaign contributions first reported as received on or after such date.