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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of	)	Arizona Supreme Court No.
	)	R-
PETITION TO AMEND RULE	)	
2.11 (DISQUALIFICATION),	)	
CODE OF JUDICIAL CONDUCT	)	
	)	
	)	

Pursuant to Rule 28, Arizona Rules of the Supreme Court, the Commission on Judicial Conduct [“Commission”] petitions the Court to adopt amendments to Rule 2.11(C) of the Code of Judicial Conduct, as proposed below.

I. Rule 2.11 Disqualification

A. Introduction and Background

Rule 2.11 of the Code governs when a judge must disqualify themselves from a matter. The rule contains an enumerated list of situations mandating disqualification, as well as a general requirement that a judge must disqualify themselves in any proceeding in which their impartiality might reasonably be

questioned. *See* Rule 2.11(A). Rule 2.11(C) allows for remittal of the disqualification. Except when the basis for disqualification is bias or prejudice under Rule 2.11(A)(1), a judge may disclose the basis for the disqualification, allow the parties to consider the matter outside the presence of the judge and court personnel, and if the parties agree to waive disqualification, the judge may continue to hear the matter, incorporating the waiver into the record.

Comment 5 to Rule 2.11 requires a judge to disclose on the record “information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.” Understandably, judges, in an abundance of caution, interpret this requirement broadly and disclose a wide variety of information that does not warrant disqualification but might conceivably be considered relevant to a motion for disqualification. Once disclosed, some judges and parties then mistakenly assume that the judge must recuse unless the parties waive disqualification under subsection C of the rule. As a result, judges are often disqualified from matters in which no true conflict exists, and/or the parties are able to seize on the disclosure as a means of judge shopping without having to file a request for change of judge for cause or burning a request for change of judge as a matter of right.

B. Current Rule 2.11(C) and Comment 5

Presently Rule 2.11(C) and Comment 5 to Rule 2.11 state as follows:

(C) A judge subject to disqualification under this rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

Comment

5. A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

C. Proposed Comment Change

To help aid judicial officers in determining what information might “reasonably” be relevant to a possible motion for disqualification, the Commission proposes to expand comment 5 to Rule 2.11 by defining “reasonably” as the standard of objective reasonableness applied by Advisory Opinions 98-02 and 96-14 from the Judicial Ethics Advisory Committee to the determination of whether, under subsection A of the rule, a judge's impartiality “might reasonably be questioned” (“ . . . the test is whether an objective, disinterested, fully informed observer would reasonably question the impartiality of the judge.”) By adding this standard, it is

hoped that judicial officers will have better guidance on what they do or do not need to disclose.

The proposed addition to comment 5 also clarifies that if a judicial officer decides to disclose information under comment 5 that does not rise to the standard of objective reasonableness for recusal under subsection A of the rule, the judicial officer is not required to recuse simply because a party files a motion for disqualification based on that disclosure, nor must the judicial officer seek or obtain a waiver under subsection C.

The proposed Comment 5 would read:

Comment

5. A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification. “Reasonably” under this comment is an objective standard and means that an objective, disinterested, fully informed observer would consider the information relevant to a motion to disqualify. A judge need not recuse themselves simply because a party files such a motion or requests recusal based on the information disclosed; disqualification is only required as set forth in subsection (A). In addition, a waiver under subsection (C) is not required unless the disclosure involves one of the circumstances described in paragraphs (A)(2) through (A)(6) or is such that an objective, disinterested, fully informed observer would reasonably question the impartiality of the judge.

II. COMPLIANCE WITH RULE 28(a)(4)(A)(iv), RULES OF THE SUPREME COURT OF ARIZONA

To the best of undersigned's knowledge, no individual or entity has filed a rule change petition regarding Rule 2.11(C) within the last five years.

III. CONCLUSION

Wherefore, the Commission requests the adoption of the proposed rule change.

DATED this 1st day of November, 2024.

COMMISSION ON JUDICIAL CONDUCT

/s/April P. Elliott

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