

MSC Order: Court releases further concurring and non-participating opinions regarding Fieger's motion to disqualify Justices Corrigan, Markman, and Young

1. April 2010

On January 28, 2009, the Court denied motions filed by the Fieger law firm to disqualify Justices Corrigan, Markman, and Young from participating in *Pellegrino v. Ampco Systems Parking*, Case No. 137111, based on statements they made about Fieger during election campaigns a decade ago. Our post on the January 28, 2009 decision in *Pellegrino* can be found [here](#).

On March 31, 2010, the Court released additional concurring and non-participating opinions in this bitter dispute. Chief Justice Kelley and Justice Hathaway each filed sharply worded concurring opinions. Both noted that the new recusal standard codified in MCR 2.003 is constitutional. They pointed out that because the standard has not been ruled unconstitutional by any court, it is "clothed in a presumption of constitutionality." Further, the Justices pointed out that the new "appearance of impropriety" standard has been adopted by at least eight other states where a justice's decision not to recuse himself or herself may be reviewed by the entire court. Given that amended MCR 2.003 is presumptively constitutional, both believe that Justices Corrigan and Young had no authority to refuse their duty to participate in this motion.

Justices Corrigan and Young each filed highly contentious non-participating opinions in response to the two concurring opinions. Both believe that amended MCR 2.003 is unconstitutional and therefore they have no duty to participate in this decision. Specifically, the Justices took issue with the broad language of the new rule. They pointed out that despite Chief Justice Kelly and Justice Hathaway's assertions to the contrary, no other state has adopted this "appearance of impropriety" standard. Both noted that they consider this new rule a threat to a justice's duty to sit in cases in which recusal would not be required by any other state in the nation. With this in mind, the Justices reiterated that they must not participate in these types of motions. To do otherwise, as Justice Young wrote, would be inconsistent with their judicial duty to uphold the due process requirements of the U.S. Constitution.

A copy of the concurring and non-participating opinions can be found [here](#).