From: Ralph Erickson <[redacted]>
Sent: Thursday, June 30, 2022 11:43 AM
To: Robert Dow <[redacted]>; Jennifer Elrod <[redacted]>
Cc: Roslynn R Mauskopf <[redacted]>
Subject: Problems Associated with Berkshire Hathaway holdings by judges

Good Morning,

I just wanted to pass on a couple of recurring issues that I'm being contacted about by judges around our circuit—and from a couple from outside the Eighth Circuit.

A number of judges have contacted me indicated that they have holdings in Berkshire Hathaway and that they have accumulated substantial capital gains that would be problematic if they moved the investment into ETFs or Mutual funds. Each of them called me because he or she had recently discovered that Berkshire Hathaway was either a parent or the parent of a parent company. The parent companies are usually disclosed on the Rule 7.1 disclosure and are caught before a judge acts or is even assigned. The problem arises when Berkshire Hathaway is the parent company of a parent company and the disclosure does not appear to be required under Rule 7.1 of the FRCivP. As an example, Orange Julius of America is wholly owned by International Dairy Queen. In compliance with Rule 7.1 Orange Julius would disclose that International Dairy Queen is its parent company—but it would not disclose that IDQ is wholly owned by Berkshire Hathaway. In some cases judges have presided only to find out later about the relationship. People who own CitiGroup have similar problems as CitiGroup has a controlling interest in some 300 companies. Given the breadth of Canon 3C(1) and the broad definition of "financial interest" in 3C(3)(C) of the Code of Conduct for United States Judges, as well as the guidance in Advisory Opinion 57 the conflict is a thorny one for judges to maneuver in the field.

This brings to mind a couple of issues, one for the Codes Committee and one for the Civil Rules Advisory Committee. First, should we amend the Certificate of Divestiture process so as to allow judges a window to preemptively divest themselves of these sorts of holdings and move into qualified investments and get a Certificate of Divestiture? As I said, the large capital gains tax is the main reason that judges still hold these investments even though they know they create a conflict nightmare.

Second, should we amend Rule 7.1 to require the disclosure of companies that hold the parent corporations of corporations in a parent relationship to a party to the action? It seems to me that more information rather than less is prudent in today's environment.

Thanks for your consideration. Have a great Independence Day holiday!

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