

1 **RULE 2.11**

2 ***Disqualification***

3 **(A) A judge shall disqualify himself or herself in any proceeding in**
4 **which the judge's impartiality* might reasonably be questioned,**
5 **including but not limited to the following circumstances:**

6 **(1) The judge has a personal bias or prejudice concerning a party**
7 **or a party's lawyer, or personal knowledge* of facts that are in dispute**
8 **in the proceeding.**

9 **(2) The judge knows* that the judge, the judge's spouse or**
10 **domestic partner,* or a person within the third degree of relationship***
11 **to either of them, or the spouse or domestic partner of such a person**
12 **is:**

13 **(a) a party to the proceeding, or an officer, director, general**
14 **partner, managing member, or trustee of a party;**

15 **(b) acting as a lawyer in the proceeding;**

16 **(c) a supervisor of, or is supervised by, a lawyer in the proceeding;**

17 **(~~c~~ d) a person who has more than a de minimis* interest that could**
18 **be substantially affected by the proceeding; or**

19 **(~~d~~ e) likely to be a material witness in the proceeding.**

20 **(3) The judge knows that he or she, individually or as a fiduciary,***
21 **or the judge's spouse, domestic partner, parent, or child, or any other**
22 **member of the judge's family residing in the judge's household,* has**
23 **an economic interest* in the subject matter in controversy or in a**
24 **party to the proceeding.**

25 **(4) The judge knows or learns by means of a timely motion that a**
26 **party, a party's lawyer, or the law firm of a party's lawyer has within**
27 **the previous three years made aggregate* contributions* to the**
28 **judge's retention in an amount that is greater than \$50 .**

29 **(5) The judge, while a judge or a judicial candidate,* has made a**
30 **public statement, other than in a court proceeding, judicial decision,**
31 **or opinion, that commits or appears to commit the judge to reach a**
32 **particular result or rule in a particular way in the proceeding or**
33 **controversy.**

34 (6) The judge:

35 (a) served as a lawyer in the matter in controversy, or was
36 associated with a lawyer who participated substantially as a lawyer in
37 the matter during such association;

38 (b) served in governmental employment, and in such capacity
39 participated personally and substantially as a lawyer or public official
40 concerning the proceeding, or has publicly expressed in such
41 capacity an opinion concerning the merits of the particular matter in
42 controversy;

43 (c) was a material witness concerning the matter; or

44 (d) previously presided as a judge over the matter in another court
45 and is now acting as a judge who would hear the appeal or trial de
46 novo.

47 (B) A judge shall keep informed about the judge's personal and
48 fiduciary economic interests, and make a reasonable effort to keep
49 informed about the personal economic interests of the judge's
50 spouse or domestic partner and minor children residing in the judge's
51 household.

52 (C) The disqualification requirement under subparagraph (A)(2)(C)
53 is eliminated if the entity that employs the judge's family member
54 removes the lawyer from the family member's line of supervision,
55 even if the judge's family member supervises or is supervised by
56 other employees in the department or division to which the lawyer is
57 assigned. The judge should make publicly available, such as by
58 posting on a court website, the actions taken by the entity that
59 employs the judge's family member to eliminate the conflict.

60

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

70 **(D E) An appellate court judge or justice subject to disqualification**
71 **under this Rule, other than for bias or prejudice under paragraph**
72 **(A)(1), may send notice to the parties disclosing the basis for the**
73 **judge or justice’s disqualification and asking them to consider**
74 **whether to waive disqualification. With respect to paragraphs (A)(2) or**
75 **(A)(3), the judge or justice may participate in the decision of the case**
76 **if all parties, other than the party presumably benefitted by the**
77 **apparent bias constituting the disqualifying circumstance, waive the**
78 **disqualification. With respect to paragraphs (A)(4) through (A)(6), the**
79 **judge or justice may participate in the decision of the case if all**
80 **parties waive the disqualification. The responses to a notice of a**
81 **disqualifying circumstance shall be included in the appellate file**
82 **pertaining to the proceeding.**

83 **COMMENT**

84 [1] Under this Rule, a judge is disqualified whenever the judge’s
85 impartiality might reasonably be questioned, regardless of whether any of
86 the specific provisions of paragraphs (A)(1) through (6) apply.

87 [2] A judge’s obligation not to hear or decide matters in which
88 disqualification is required applies regardless of whether a motion to
89 disqualify is filed.

90 [3] The rule of necessity may override the rule of disqualification. For
91 example, a judge might be required to participate in judicial review of a
92 judicial salary statute, or might be the only judge available in a matter
93 requiring immediate judicial action, such as a hearing on probable cause or
94 a temporary restraining order. In matters that require immediate action, the
95 judge must disclose on the record the basis for possible disqualification and
96 make reasonable efforts to transfer the matter to another judge as soon as
97 practicable.

98 [4] A judge is disqualified in proceedings involving a law firm that
99 employs the judge’s spouse, domestic partner, parent, or child, or any other
100 member of the judge’s family residing in the judge’s household as an equity
101 holder in the law firm. A judge is not disqualified in other situations unless
102 the judge’s impartiality might reasonably be questioned under paragraph
103 (A), or a relative is known by the judge to have an interest in the law firm
104 that could be substantially affected by the proceeding under paragraph
105 (A)(2)(c).

106 [5] A judge should disclose on the record information that the judge
107 believes the parties or their lawyers might reasonably consider relevant to a

108 possible motion for disqualification, even if the judge believes there is no
109 basis for disqualification.