

In the
Indiana Supreme Court



Cause No. 94S00-1701-MS-5

Order Amending Indiana Code of Judicial Conduct

Under the authority vested in this Court pursuant to Article 7, Section 4 of the Indiana Constitution providing for the discipline, removal and retirement of judges, the Indiana Code of Judicial Conduct, Rules 2.5 and 2.11 are amended to read as follows (deletions shown by striking and new text shown by underlining):

...

RULE 2.5: Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties competently, diligently, and promptly.

(B) A judge shall cooperate with other judges and court officials in the administration of court business.

Comment

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office-, including the benefits and risks associated with the technology relevant to service as a judicial officer.

...

RULE 2.11: Disqualification

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

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

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

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

- (b) acting as a lawyer in the proceeding;
- (c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or
- (d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding that could be substantially affected by the proceeding.

(4) [Reserved]

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

(6) The judge:

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

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

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

(d) previously presided as a judge over the matter in another court.

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

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1) or for conflicts under paragraph (A)(2), shall 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 and shall be in writing and signed by the parties.

Comment

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs

(A)(1) through (6) apply. In many jurisdictions, the term “recusal” is used interchangeably with the term “disqualification.”

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

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

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[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.

[6] “Economic interest,” as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

- (1) an interest in the individual holdings within a mutual or common investment fund;
- (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;
- (3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or
- (4) an interest in the issuer of government securities held by the judge.

[7] A statement that “appears to commit” a judge within the meaning of Rule 2.11 (A)(5) is one that a reasonable person would believe from the judge's public statement that the judge has specifically undertaken to reach a particular result.

[8] A waiver procedure provides the parties an opportunity to proceed without delay if they wish to waive disqualification.

- (1) Because of the important nature of maintaining confidence in the judiciary, a judge should, even over the agreement of the parties, disqualify himself/herself in any situation when reasonable minds with knowledge of all the relevant circumstances disclosed by a reasonable inquiry would conclude that the judge's integrity, impartiality,

or independence to serve as a judge is impaired. The waiver procedures should not be construed to relieve the judge of the duty to disqualify when appropriate.

(2) A judge should be especially cautious of accepting a waiver from a self-represented litigant when the opposing party is represented by counsel. To ensure a voluntary, intentional, and knowledgeable waiver, a judge should inquire on the record whether the self-represented litigant understands the nature of the conflict and is explicitly, intentionally, and voluntarily relinquishing the disqualification.

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The amendment to Rule 2.5 shall take effect upon January 1, 2018.

The amendment to Rule 2.11 shall take effect upon the date of this Order.

Done at Indianapolis, Indiana, on 7/31/2017 .



Loretta H. Rush
Chief Justice of Indiana

All Justices concur.