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**JUDICIAL OFFICERS: AUTHORITY &  
RESPONSIBILITY**

**JUDICIAL DISQUALIFICATION**  
Indiana Code of Judicial Conduct 2.11

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As of July 31, 2017, Indiana joined the majority of states as well as the ABA by adopting language permitting parties to waive judicial disqualification under certain circumstances. These amendments to Indiana Code of Judicial Conduct 2.11 are aimed at avoiding unnecessary delays and perhaps injustices in proceedings before the court. The amendments are of particular importance to jurisdictions with a single judge and those jurisdictions with judicial officers who were formerly the elected prosecutor, a public defender, or a Department of Child Services attorney.

A judge who is subject to disqualification that may be waived must disclose on the record the basis of the disqualification on the record, allow the parties the opportunity, outside the presence of the judge and court personnel, to consider waiving disqualification, and incorporate any agreement by the parties to waive disqualification (which must be in writing) into the record of the proceeding.

Judicial disqualification continues to be **mandatory** under Indiana Code of Judicial Conduct Rule 2.11 in the following circumstances:

- The judge has a personal bias or prejudice concerning a party or a party's lawyer or has personal knowledge of facts that are in dispute in the proceeding. Ind. Judicial Code of Conduct Rule 2.11(A)(1)
- 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 party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
  - acting as a lawyer in the proceeding;
  - a person who has more than a de minimis interest that could be substantially affected by the proceedings; or
  - likely to be a material witness in the proceeding. Jud. Cond. R. 2.11(A)(2)

## **SAMPLE DIALOGUE AND WAIVER FORM:**

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The Judicial Conference Ethics & Professionalism Committee has developed a sample dialogue and waiver form to assist judges with the waiver process.

### JUDICIAL DIALOGUE FOR ADVISEMENT OF CONFLICT AND OPPORTUNITY TO WAIVE

The Court: It has come to my attention that I need to make a disclosure in this case regarding how I might not be seen as impartial in this case. I need to advise the parties that the following issue has come to my attention:

***NOTE: Recusal for reasons under ICJC 2.11 (A) (1 and 2) cannot be waived.***

[short statement of conflict basis under ICJC 2.11 (A) (3) to (6)]

***If under (A)(3):*** I need to advise the parties that I or a family member have an economic interest in this case. In that:

\_\_\_\_\_.

***If under (A)(5):*** I need to advise the parties that I have made (a) public statement(s) about issues involved in this case, and everyone should know I have previously, stated \_\_\_\_\_ about the issue of

\_\_\_\_\_.

***If under(A)(6):*** I need to advise the parties that I have had involvement in this matter as \_\_\_\_\_, and this technically creates a conflict of interest.

As things stand now, I believe I can put this aside and still be fair and impartial. I also understand that any of you may not see it that way, and I will disqualify myself, unless I am requested to remain in the case. I also understand a disqualification will create delay and frustration that the parties may wish to avoid.

I am required to provide you the opportunity to privately discuss this with counsel outside of my presence, and we will take a quick break to allow you to do that. If you wish to waive this issue and move forward today, there is a form you will need to complete, that we will provide. If not, we will need to begin the process of securing a new judge. Please let my office staff know when you decide, and we will make a record of what you are going to do.

### SAMPLE FORM

The sample form may be found with the Criminal Forms and Civil Forms posted on the Indiana Supreme Court's website.