

CANON 2, RULE 2.11

A judge shall perform the duties of judicial office impartially, competently, and diligently.

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,* 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 knowingly, individually, or as a fiduciary* or the judge's spouse, domestic partner, parent, or child, wherever residing, 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 is a party to the proceeding.
 - (4) 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.

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- (5) The judge:
 - (a) served as a lawyer in the matter;
 - (b) represented any party to the matter while engaged in the private practice of law within a period of seven years following the last date on which the judge represented the party;
 - (c) within the preceding three years was associated in the private practice of law with any law firm or lawyer currently representing any party in the matter (provided that referral of cases when no monetary interest was retained shall not be deemed an association within the meaning of this paragraph);
 - (d) served in governmental employment and in such capacity participated personally and substantially as a lawyer or public official concerning the matter or has publicly expressed in such capacity an opinion concerning the merits of the particular matter;
 - (e) was a material witness concerning the matter; or
 - (f) 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), may 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

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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.

COMMENTS

- [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. For example, the participation in a matter involving a person with whom the judge has an intimate relationship or a member of the judge's staff may require 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.

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- [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 judge’s use of social media or social networking platforms may create the appearance of a relationship between the judge and litigants or lawyers who may appear before the judge. Whether a relationship would cause the judge’s impartiality to “reasonably be questioned” depends on the facts. While the labels used by the social media or social networking platform (*e.g.*, “friend”) are not dispositive of the nature of the relationship, judges should consider the manner in which the rules on disqualification have been applied in traditional contexts and the additional ways in which social media or social networking platforms may amplify any connection to the judge.