

1 **RULE 2.11 Disqualification**

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

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

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

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

16
17 (b) Acting as a lawyer in the proceeding;

18
19 (c) Has more than a *de minimis* interest that could be substantially affected by
20 the proceeding;

21
22 (d) Likely to be a material witness in the proceeding.

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

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29 ~~(4) The judge knows or learns by means of a timely motion that a party, a party’s~~
30 ~~lawyer, or the law firm of a party’s lawyer has within the previous [insert number]~~
31 ~~year[s] made aggregate contributions to the judge’s campaign in an amount that [is~~
32 ~~greater than \$[insert amount] for an individual or \$[insert amount] for an entity] [is~~
33 ~~reasonable and appropriate for an individual or an entity]. [RESERVED]~~

34
35 (5) The judge, while a judge or a *judicial candidate*, has made a public statement,
36 other than in a court proceeding, judicial decision, or opinion, that commits or appears to
37 commit the judge to reach a particular result or rule in a particular way in the proceeding
38 or controversy.

39
40 (6) The judge knows that the judge’s spouse or *domestic partner*, or a person within
41 the *third degree of relationship* to either of them, or the spouse or *domestic partner* of
42 such a person has acted as a judge in the proceeding.

43
44 (7) The judge meets any of the following criteria:
45

46 (a) The judge served as a lawyer in the matter in controversy or was
47 associated with a lawyer who participated substantially as a lawyer in the matter
48 during such association;

49
50 (b) The judge served in governmental employment, and in such capacity
51 participated personally and substantially as a lawyer or public official concerning
52 the ~~proceeding~~ particular matter, or has publicly expressed in such capacity an
53 opinion concerning the merits of the particular matter in controversy;

54
55 (c) The judge was a material witness concerning the matter;

56
57 (d) The judge previously presided as a judge over the matter in another court.
58

59 (B) A judge shall keep informed about the judge's personal and *fiduciary economic*
60 *interests*, and make a reasonable effort to keep informed about the personal economic interests of
61 the judge's spouse or *domestic partner* and minor children residing in the judge's household.
62

63 (C) A judge subject to disqualification under this rule, other than for personal bias or
64 prejudice under division (A)(1) of this rule, may disclose on the record the basis of the judge's
65 disqualification and may ask the parties and their lawyers to consider, outside the presence of the
66 judge and court personnel, whether to waive disqualification. If, following the disclosure, the
67 parties and lawyers agree, without participation by the judge or court personnel, that the judge
68 should not be disqualified, the judge may participate in the proceeding. The agreement shall be
69 incorporated into the record of the proceeding.
70

71 72 **Comment**

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74 [1] Under this rule, a judge is disqualified whenever the judge's impartiality might
75 reasonably be questioned, regardless of whether any of the specific provisions of divisions (A)(1)
76 to (6) apply. ~~In many jurisdictions, the term "recusal" is used interchangeably with the term~~
77 ~~"disqualification."~~
78

79 [2] A judge's obligation not to hear or decide matters in which disqualification is
80 required applies regardless of whether a motion to disqualify is filed.
81

82 [3] The rule of necessity may override the rule of disqualification. For example, a
83 judge might be required to participate in judicial review of a judicial salary statute or might be
84 the only judge available in a matter requiring immediate judicial action, such as a hearing on
85 probable cause or a temporary restraining order. In matters that require immediate action, the
86 judge must disclose on the record the basis for possible disqualification and make reasonable
87 efforts to transfer the matter to another judge as soon as practicable.
88

89 [4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a
90 relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's
91 impartiality might reasonably be questioned under division (A), or the relative is known by the

92 judge to have an interest in the law firm that could be substantially affected by the proceeding
93 under division (A)(2)(c), the judge’s disqualification is required.

94
95 [5] A judge should disclose on the record information that the judge believes the
96 parties or their lawyers might reasonably consider relevant to a possible motion for
97 disqualification, even if the judge believes there is no basis for disqualification.

98
99 [6] “Economic interest,” ~~as set forth~~ is defined in the Terminology section, ~~means~~
100 ~~ownership of more than a *de minimis* legal or equitable interest. Except for situations in which a~~
101 ~~judge participates in the management of such a legal or equitable interest, or the interest could be~~
102 ~~substantially affected by the outcome of a proceeding before a judge, it does not include any of~~
103 ~~the following:~~

104
105 (1) ~~An interest in the individual holdings within a mutual or common investment~~
106 ~~fund;~~

107
108 (2) ~~An interest in securities held by an educational, religious, charitable, fraternal, or~~
109 ~~civic organization in which the judge or the judge’s spouse, domestic partner, parent, or~~
110 ~~child serves as a director, officer, advisor, or other participant;~~

111
112 (3) ~~A deposit in a financial institution or deposits or proprietary interests the judge~~
113 ~~may maintain as a member of a mutual savings association or credit union, or similar~~
114 ~~proprietary interests;~~

115
116 (4) ~~An interest in the issuer of government securities held by the judge.~~

117 118 119 **Comparison to Ohio Code of Judicial Conduct**

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121 Rule 2.11 is comparable to Ohio Canons 3(E) and (F) with the exception of Rule
122 2.11(A)(5), which has no comparable provision in the Ohio Code.

123 124 **Comparison to ABA Model Code of Judicial Conduct**

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126 With two exceptions, Rule 2.11 is comparable to Model Rule 2.11. Division (A)(4),
127 relative to the disqualification of a judge who receives a campaign contribution in excess of a
128 specific amount, is not adopted, in part because Rule 4.4 contains what are considered reasonable
129 contribution limits applicable to individuals and organizations, including parties, lawyers, and
130 law firms.

131
132 Division (A)(6) is new language that addresses disqualification when a judge’s spouse
133 has previously acted as a judge in the same proceeding. This provision is comparable to Ohio
134 Canon 3(E)(1)(d)(iii) but is not found in the Model Code.

135
136 Comment [1] is modified slightly to remove a reference to the fact that some jurisdictions
137 use interchangeably the terms “recusal” and “disqualification.” Comment [6] is modified

138 because it merely restates the definition of “economic interest” found in the Terminology
139 section.