



# Ohio Board of Professional Conduct

## OPINION 2024-06

Issued December 13, 2024

Withdraws Adv. Op. 1989-34

### **Judicial Disqualification When Counsel for Party Represents Judge in Other Matter**

**SYLLABUS:** Absent a waiver by the parties, a judge must recuse himself or herself from cases in which a party is represented by a lawyer who is concurrently representing the judge in another matter. The duty to disqualify does not extend to other lawyers in the same law firm or public office as the lawyer who is representing the judge.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.



# Ohio Board of Professional Conduct

THOMAS J. MOYER OHIO JUDICIAL CENTER  
65 SOUTH FRONT STREET, 5<sup>TH</sup> FLOOR, COLUMBUS, OH 43215-3431  
614.387.9370  
www.bpc.ohio.gov

HON. D. CHRIS COOK  
CHAIR  
PATRICK M. McLAUGHLIN  
VICE-CHAIR

RICHARD A. DOVE  
DIRECTOR  
D. ALLAN ASBURY  
SENIOR COUNSEL  
VACANT  
COUNSEL

## OPINION 2024-06

Issued December 13, 2024  
Withdraws Adv. Op. 1989-34

### **Judicial Disqualification When Counsel for Party Represents Judge in Other Matter**

**SYLLABUS:** Absent a waiver by the parties, a judge must recuse himself or herself from cases in which a party is represented by a lawyer who is concurrently representing the judge in another matter. The duty to disqualify does not extend to other lawyers in the same law firm or public office as the lawyer who is representing the judge.

**APPLICABLE RULES:** Jud.Cond.R. 2.11

#### **QUESTIONS PRESENTED:**

Whether a judge must recuse himself or herself from a matter when a lawyer who represents a party before the judge concurrently represents the judge in another matter.

#### **ANALYSIS:**

##### *Disqualification in General*

Jud. Cond. R. 2.11(A) requires a judge to disqualify himself or herself when the judge's impartiality may be reasonably questioned, including but not limited to several enumerated circumstances in the rule. "The proper test for determining whether a judge's participation in a case presents an appearance of impropriety is \* \* \* an objective one. A judge should step aside or be removed if a reasonable and objective observer would harbor serious doubts about the judge's impartiality." *In re Disqualification of Lewis*, 117, 2004-Ohio-7359, ¶8. The "reasonable observer" is considered to be "fully informed of all

the relevant facts in the record—not isolated facts divorced from their larger context." *In re Disqualification of Gall*, 2013-Ohio-1319, ¶6. The scenario set forth in the question presented is not one of the enumerated circumstances contained in Jud.Cond.R. 2.11(C) and must be analyzed by application of Jud.Cond.R. 2.11(A) and relevant case law.

*Judge Currently Represented by Party's Lawyer*

Former Chief Justices have held that a judge should not "sit in a case which a litigant is represented by the [judge's] lawyer." *In re Disqualification of Badger*, 47 Ohio St.3d 604 (1989). Absent a waiver from the parties, a judge must recuse himself or herself from cases in which a party is represented by a lawyer who concurrently represents the judge in another matter. Former Chief Justices have reasoned that a judge's impartiality may be reasonably questioned if a judge presides over a case under these circumstances. *In re Disqualification of Reinbold*, 2017-Ohio-9427. The recusal of the judge is required regardless of whether the judge is represented by the lawyer in a personal matter or in the judge's official capacity. *Badger* at 604.

The disqualification standard applies regardless of whether the judge is represented by a lawyer in private practice or a lawyer in a government office. However, the appearance of a different lawyer from the same law firm, prosecutor's office, or attorney general's office does not mandate the judge's recusal. *In re Disqualification of Mingo*, 2021-Ohio-3269, ¶6. In addition, disqualification may not be necessary if the judge is merely a nominal party in the case or is not personally or substantively involved in the litigation. *Reinbold* at ¶5, citing Flamm, *Judicial Disqualification*, Section 8.5, at 212 (2d Ed. 2007).

Finally, disqualification is required only if the judge has an existing client-lawyer relationship with the counsel representing a party in the case before the judge. *In re Disqualification of Morgan*, 74 Ohio St.3d 1223, 1224, 657 N.E.2d 1335 (1990). Likewise, a former Chief Justice refused to adopt a rule that requires disqualification of a judge from a case when a lawyer in the case previously represented the judge in an unrelated action. *In re Disqualification of Morley*, 74 Ohio St.3d 1265, 1266 (1994).

Based on the cited provisions of the Code of Judicial Conduct and disqualification decisions issued by Chief Justices of the Supreme Court, the Board concludes that a judge must recuse from a pending matter in which a lawyer for a party is currently representing

the judge in a personal or official capacity. Where the judge is represented by the county prosecutor or other governmental office pursuant to statute or other law, recusal may be avoided through the assignment of another attorney to the pending matter. Although this alternative may work a hardship in smaller government offices, protocols can be put in place to balance resource limitations with ethical obligations.

#### *Waiver of Disqualification*

A judge subject to disqualification under Jud.Cond.R. 2.11, except when the judge possesses bias or prejudice against a party or its lawyer, “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.” Jud.Cond.R. 2.11(C). If 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,” and the parties’ agreement “shall be incorporated into the record of the proceeding.” *Id.* Despite the availability of the process in Jud.Cond.R. 2.11(C), a judge should carefully consider whether a waiver is appropriate after reviewing all the circumstances related to the judge’s disclosure of the basis for possible disqualification.

#### *Rule of Necessity*

In certain situations, the “rule of necessity” may allow a judge who would otherwise be disqualified to temporarily hear matters requiring immediate action—such as a probable cause determination or a temporary restraining order hearing—if no other judge is available. Jud.Cond.R. 2.11, cmt. [3]. In this circumstance, the judge should disclose on the record the basis for disqualification and make arrangements for the assignment of the matter to a different judge at the earliest opportunity. *Id.*