



# Ohio Board of Professional Conduct

## OPINION 2024-07

Issued December 13, 2024

Withdraws Adv. Op. 1987-023

### **Disqualification When Judicial Campaign Opponent Appears Before Judge**

**SYLLABUS:** A judge is not required to recuse from a matter in which the judge's campaign opponent represents a party before the judge unless the judge's impartiality may be reasonably questioned.

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# Ohio Board of Professional Conduct

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**APPLICABLE RULES:** Jud.Cond.R. 1.2, 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 is the judge's current campaign opponent.

#### **ANALYSIS:**

##### *Disqualification in General*

Judges are required to act in a manner that promotes the independence, integrity, and impartiality of the judiciary. Jud. Cond. R. 1.2. Consequently, 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*, 2004-Ohio-7359, ¶8. A "reasonable

observer” is “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 issue raised by the question presented does not fall under the circumstances specified in Jud.Cond.R. 2.11(C) and must instead be evaluated under Jud.Cond.R. 2.11(A) and relevant case law.

The statutory right to seek disqualification of a judge is an extraordinary remedy. *In re Disqualification of Hunter* (1988), 36 Ohio St.3d 607. Judges are “presumed to follow the law and not to be biased, and the appearance of bias or prejudice must be compelling to overcome these presumptions.” *In re Disqualification of George*, 2003-Ohio-5489, ¶6. In disqualification cases, “[t]he term ‘bias or prejudice’ ‘implies a hostile feeling or spirit of ill-will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contradistinguished from an open state of mind which will be governed by the law and the facts.’” *In re Disqualification of O’Neill*, 2002-Ohio-7479, ¶14, quoting *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956), paragraph four of the syllabus. Unless evidence of personal bias or prejudice exists on the part of the judge, the presumption of impartiality is not overcome, and the judge is not required to recuse himself or herself from the matter.

#### *Affidavit of Disqualification Case Law Relative to Judicial Elections*

Ohio judges are selected by the electorate, and incumbent judges often must campaign to retain their judicial office. Judicial campaigns can give rise to questions about the incumbent judge’s impartiality when his or her campaign opponent represents a party before the judge. Affidavit of disqualification cases “involving political and campaign issues are decided on a case-by-case basis.” *Jones v. Geauga Cty. Republican Party Cent. Comm.* (*In re Disqualification of Burt*), 2015-Ohio-5670, ¶6.

It is well settled that a lawyer’s status as a current or former campaign opponent of a judge is not, by itself, sufficient grounds for the judge’s disqualification. Former Chief Justices have “decline[d] to establish a far-reaching rule that mandates the recusal or disqualification of a judge merely because a party to or a lawyer in the underlying case campaigned for or against the judge.” *In re Disqualification of Celebrezze* (1991), 74 Ohio St. 3d 1231. However, a judge may be disqualified if there are facts on the record arising out

of an election campaign that would cause the judge's impartiality to be reasonably questioned. *In re Disqualification of Hurley*, 2014-Ohio-5874. For example, in *In re Disqualification of Maschari*, 1999-Ohio-8, the lawyer campaign opponent filed two campaign grievances against the incumbent judge and a former Chief Justice found that this combination of factors created an appearance of impropriety that mandated the judge's disqualification.

Judicial campaigns can vary widely, ranging from candidates who conduct themselves ethically and remain cordial during and after the election to the filing of campaign conduct grievances by one or both candidates alleging campaign misconduct. Judges are encouraged to assess each situation involving a campaign opponent by considering factors such as the nature of the campaign and any residual personal feelings the judge may hold toward his or her opponent. If, after assessing the relevant factors, the judge determines that he or she can be fair and impartial while presiding over a matter involving a current or former campaign opponent and that his or her impartiality could not be reasonably questioned, then the judge's recusal is not mandated under Jud.Cond.R. 2.11 or relevant case law.