

DISQUALIFICATION AND DISCLOSURE

Quick Tips

Introduction

Disqualification and disclosure go to the heart of judicial fairness, independence, and impartiality.

- Disqualification and disclosure are major sources of complaints and discipline for the CJP.
- Go to the rules when you have a question.
- Do *not* follow as a rule of thumb “When in doubt, disqualify yourself.” Canon 3B(1) dictates that “a judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified.”
- Make your decisions in the proper order. **First** decide whether to disqualify yourself. **Then**, if you decide you need not disqualify yourself, decide whether you must disclose.

Specified Grounds for Disqualification Required by Law

A temporary judge shall . . . disqualify himself or herself in any proceeding as follows: . . . [Canon 6D(3).]

Note: If you decide to disqualify yourself, you need not disclose the reason.

The temporary judge:

- Has personal knowledge . . . of disputed evidentiary facts concerning the proceeding. [Canon 6D(3)(a)(i).]
- Has served as a lawyer . . . in the proceeding. [Canon 6D(3)(a)(ii).]
- Has, within the last five years, given legal advice to, or served as a lawyer . . . for a party in the present proceeding. [Canon 6D(3)(a)(iii).]
- Has a financial interest . . . in the subject matter in the proceeding or in a party to the proceeding. [Canon 6D(3)(a)(iv).]

Note: A financial interest includes ownership of \$1500 or more of stock or bonds of a party. Participation in a mutual fund that has some of a party’s stocks or bonds doesn’t count as a financial interest in that party.

- [or a designated family member] is a party to the proceeding or is an officer, director, or trustee of a party. [Canon 6D(3)(a)(v).]
- A lawyer or spouse of a lawyer in the proceeding is [a specified member of the temporary judge’s family] and associated in the private practice of law with a lawyer in the proceeding. [Canon 6D(3)(a)(vi).]
- For any reason:
 - believes his or her recusal would further the interests of justice.
 - (a) believes there is a substantial doubt as to her capacity to be impartial.
 - (b) believes a person aware of the facts might reasonably doubt that the temporary judge could be impartial. Bias or prejudice toward an attorney in the proceeding may be grounds for disqualification. [Canon 6D(3)(a)(vii).]

has a current arrangement concerning compensated service as a dispute resolution neutral; or, within the last two years, has been in discussions about that, and the ADR provider is a party; or the case involves ADR issues. [Canon 6D(3)(c).]

Appellate Disqualification

A temporary judge before whom a proceeding was tried or heard is disqualified from participating in any appellate review of that proceeding. [Canon 6D(3)(b).]

Limitations in Family Law and Unlawful Detainer Actions

An attorney may not serve as temporary judge in family law or unlawful detainer actions if:

- The lawyer holds himself or herself out to the public as representing exclusively one side [Canon 6D(3)(d)(i).] ; or
- The lawyer represents one side in 90 percent or more of the cases in which he or she appears. [Canon 6D(3)(d)(ii).]
- . . . One party is self-represented and the other party is represented by an attorney or is an attorney. [CRC 2.818(b)(3).]

Other Limitations—As an Attorney

An attorney is prohibited from serving as a temporary judge if the attorney:

- In any type of case, is appearing on the same day in the same courthouse as an attorney or as a party. [CRC 2.818(b)(1).]
- In the same type of case, is presently a party to any action or proceeding in the court. For good cause the presiding judge may waive this provision.
- [CRC 2.818(b)(2).]

Waiver

- After a temporary judge has determined himself disqualified and has disclosed the basis for the disqualification on the record, the parties may agree to waive the disqualification, and the temporary judge may accept the waiver. The temporary judge shall not a) seek to induce a waiver, or b) make any effort to discover who favored or opposed a waiver. [Canon 6D(4).]

Note: The waiver must be in writing. It must state the basis for the disqualification or limitation, and that it was made knowingly. The waiver is effective only when signed by all parties and their lawyers and filed in the record.

- No waiver is permitted where the basis for the disqualification is that the temporary judge has a) a personal bias or prejudice concerning a party, b) served as an attorney in the matter in controversy, or c) been a material witness in the controversy [CRC 2.818(c)(2).]
- If the grounds for disqualification or limitation are first learned of after the temporary judge has made one or more rulings in a proceeding, but before she has completed judicial action in the proceeding, the temporary judge, unless the disqualification or limitation is waived,

must disqualify herself. In the absence of good cause, however, the rulings the temporary judge has made up to that time must not be set aside by whoever replaces the temporary judge. [CRC 2.818(d).]

Notification of the Court

Whenever a temporary judge determines himself disqualified or limited from serving, he a) must notify the presiding judge of his withdrawal, and b) must not further participate in the proceeding, unless his disqualification or limitation is waived by the parties as provided in (c). [CRC 2.818(e).]

Requests for Disqualification

A party may request that a temporary judge withdraw on the ground that she is disqualified or limited from serving. If a temporary judge who should disqualify herself fails to withdraw, a party may apply to the presiding judge for a withdrawal of the stipulation. [CRC 2.818(f).]

Disclosure

Once you've decided whether or not to disqualify yourself, you must next decide whether or not to disclose. When in doubt, err on the side of disclosure.

- A temporary judge shall disclose in writing or on the record information as required by law, or information that the parties or their lawyers might reasonably consider relevant to the question of disqualification—even if the temporary judge concludes that there is no actual basis for disqualification. [Canon 6D(5)(a).]
- A temporary judge shall disclose in writing or on the record his membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation, except for membership in a) a religious organization. [Canon 6D(5)(b).]
Note: Canon 4A prohibits extrajudicial activities that interfere with the performance of judicial duties, demean the judicial office, or cast doubt on the judge's ability to be fair.
- A temporary judge shall disclose to the parties personal or professional relationships that she or her law firm has had with a party, lawyer, or law firm in the current proceeding. [Canon 6D(5)(a).]