

Judicial Disqualification Checklist¹

The following checklist assumes a trial court judge has been asked by a party to recuse himself or herself, and is based on [MCR 2.003](#).

- Ensure the motion:
 - was made within 14 days of the discovery of the grounds for disqualification (or good cause exists to grant the motion despite its untimeliness), see [MCR 2.003\(D\)\(1\)\(a\)](#); [MCR 2.003\(D\)\(1\)\(D\)](#).
 - includes an affidavit, [MCR 2.003\(D\)\(2\)](#).
 - is being decided by the challenged judge, [MCR 2.003\(D\)\(3\)](#).
- Determine whether one or more of the following reasons for disqualification exist²:
 - I am biased or prejudiced for or against a party or attorney. [MCR 2.003\(C\)\(1\)\(a\)](#).³
 - I have, based on objective and reasonable perceptions, a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v Massey*, 556 US 868 (2009). [MCR 2.003\(C\)\(1\)\(b\)\(i\)](#).⁴
 - I believe, based on objective and reasonable perceptions, my continued assignment would create an appearance of impropriety. [MCR 2.003\(C\)\(1\)\(b\)\(ii\)](#).
 - I have personal knowledge of disputed evidentiary facts concerning the proceeding. [MCR 2.003\(C\)\(1\)\(c\)](#).

¹See the Michigan Judicial Institute's [Judicial Disqualification Benchbook](#) for more information.

²Disqualification is not warranted (a) merely because the judge's former law clerk is an attorney of record for a party in an action that is before the judge or is associated with a law firm representing a party in an action that is before the judge, or (b) based solely upon campaign speech protected by *Republican Party of Minn v White*, 536 US 765 (2002), so long as such speech does not demonstrate bias or prejudice or an appearance of bias or prejudice for or against a party or an attorney involved in the action. [MCR 2.003\(C\)\(2\)](#).

³"[T]he party who challenges a judge on the basis of bias or prejudice must overcome a heavy presumption of judicial impartiality." *Cain v Dep't of Corrections*, 451 Mich 470, 497 (1996). Further, "[t]he mere fact that a judge ruled against a litigant, even if the rulings are later determined to be erroneous, is not sufficient to require disqualification or reassignment." *In re Contempt of Henry*, 282 Mich App 656, 680 (2009). Moreover, "a trial judge's remarks made during trial, which are critical of or hostile to counsel, the parties, or their cases, ordinarily do not establish qualifying bias." *In re MKK*, 286 Mich App 546, 566 (2009).

⁴"[M]ost disputes over disqualification will be resolved without resort to the Constitution," and "[a]pplication of the constitutional standard implicated in [*Caperton*] will thus be confined to rare instances." *Caperton*, 556 US at 890.

- I have been consulted or employed as an attorney in the matter in controversy. [MCR 2.003\(C\)\(1\)\(d\)](#).
- I was a partner of a party, attorney, or a member of a law firm representing a party within the preceding two years. [MCR 2.003\(C\)\(1\)\(e\)](#).⁵
- I know that I, individually or as a fiduciary, or my spouse, parent, or child wherever residing, or any other member of my family residing in my household, have more than a de minimis economic interest in the subject matter in controversy that could be substantially impacted by the proceeding. [MCR 2.003\(C\)\(1\)\(f\)](#).
- I or my spouse, or a person within the third degree of relationship to either of us, or the spouse of such a person:
 - is a party to the proceeding, or an officer, director, or trustee of a party, [MCR 2.003\(C\)\(1\)\(g\)\(i\)](#);
 - is acting as a lawyer in the proceeding, [MCR 2.003\(C\)\(1\)\(g\)\(ii\)](#);
 - is known by me to have a more than de minimis interest that could be substantially affected by the proceeding, [MCR 2.003\(C\)\(1\)\(g\)\(iii\)](#); or
 - is to my knowledge likely to be a material witness in the proceeding. [MCR 2.003\(C\)\(1\)\(g\)\(iv\)](#).
- If denying the motion:
 - In a court having two or more judges, on the request of a party, refer the motion to the chief judge, who must decide the motion de novo. [MCR 2.003\(D\)\(3\)\(a\)\(i\)](#).
 - In a single-judge court, or if the challenged judge is the chief judge, on the request of a party, refer the motion to the state court administrator for assignment to another judge, who must decide the motion. [MCR 2.003\(D\)\(3\)\(a\)\(ii\)](#).
- If granting the motion, ensure that the action is assigned to another judge of the same court, or, if one is not available, contact the state court administrator who must assign another judge. [MCR 2.003\(D\)\(4\)\(a\)](#).

Court forms to use:

[Order of Disqualification/Reassignment](#), MC 264

[Waiver of Disqualification](#), MC 272

⁵If you are a newly elected/appointed judge and were previously a prosecutor or city attorney, it is advisable to disclose such and to execute a waiver during your first two years on the bench.