

# ATTACHMENT 2

court may on its own initiative order the person for whom the fees or costs were waived or suspended to pay those fees or costs when the reason for the waiver or suspension no longer exists.

[Effective March 1, 1985; amended May 2, 1995, effective July 1, 1995, 448 Mich.]

### Comments

#### 1985 Staff Comment

MCR 2.002 is substantially the same as GCR 1963, 120.

#### Staff Comment to 1995 Amendment

The amendments of MCR 2.002, effective July 1, 1995, add a new subrule (A)(2) defining "fees and costs," as meaning only filing fees required by law, excluding such costs and expenses as transcript preparation. There are corresponding adjustments in subrules (C) and (D).

## RULE 2.003 DISQUALIFICATION OF JUDGE

(A) **Who May Raise.** A party may raise the issue of a judge's disqualification by motion, or the judge may raise it.

(B) **Grounds.** A judge is disqualified when the judge cannot impartially hear a case, including but not limited to instances in which:

(1) The judge is personally biased or prejudiced for or against a party or attorney.

(2) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

(3) The judge has been consulted or employed as an attorney in the matter in controversy.

(4) The judge was a partner of a party, attorney for a party, or a member of a law firm representing a party within the preceding two years.

(5) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding.

(6) The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(a) is a party to the proceeding, or an officer, director or trustee of a party;

(b) is acting as a lawyer in the proceeding;

(c) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;

(d) is to the judge's knowledge likely to be a material witness in the proceeding.

A judge is not disqualified 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.

### (C) Procedure.

(1) *Time for Filing.* To avoid delaying trial and inconveniencing the witnesses, a motion to disqualify must be filed within 14 days after the moving party discovers the ground for disqualification. If the discovery is made within 14 days of the trial date, the motion must be made forthwith. If a motion is not timely filed, untimeliness, including delay in waiving jury trial, is a factor in deciding whether the motion should be granted.

(2) *All Grounds to Be Included; Affidavit.* In any motion under this rule, the moving party must include all grounds for disqualification that are known at the time the motion is filed. An affidavit must accompany the motion.

(3) *Ruling.* The challenged judge shall decide the motion. If the challenged judge denies the motion,

(a) in a court having two or more judges, on the request of a party, the challenged judge shall refer the motion to the chief judge, who shall decide the motion de novo;

(b) in a single-judge court, or if the challenged judge is the chief judge, on the request of a party, the challenged judge shall refer the motion to the state court administrator for assignment to another judge, who shall decide the motion de novo.

(4) *Motion Granted.* When a judge is disqualified, the action must be assigned to another judge of the same court, or, if one is not available, the state court administrator shall assign another judge.

(D) **Remittal of Disqualification.** If it appears that there may be grounds for disqualification, the judge may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If, following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceedings. The agreement shall be in writing or placed on the record.

[Effective March 1, 1985; amended July 10, 1995, effective September 1, 1995, 449 Mich.]

### Comments

#### 1985 Staff Comment

MCR 2.003 is based on GCR 1963, 912.

Under subrule (B)(3) a judge is disqualified not only as to a proceeding in which the judge was consulted or employed as counsel (see GCR 1963, 912.2[a][3]), but also when the judge was consulted or employed as counsel in the matter in controversy, even before it reached the litigation stage.

Subrule (C)(1) changes the time when the motion must be filed. A party must file a motion within 14 days after learning of the ground for disqualification, rather than 10