

[CAPTION]

VERIFIED MOTION FOR RECUSAL OF JUDGE

The Defendant, by counsel, respectfully requests this Court to recuse itself. In support of the Motion, the Defendant states the following:

1. Judicial Canon 2.11(A) states that “[a] judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” Canon 2.11 includes a non-exhaustive list of specific instances where judicial disqualification is mandated.
2. The judge’s continued involvement in the above-captioned cause creates in reasonable minds a perception that the judge’s ability to carry out its responsibilities in this case with impartiality is impaired.
3. [Insert facts supporting the reason why the judge lacks an appearance of impartiality].
4. Freedom of a tribunal from bias or prejudice is a central element of substantive due process of the Federal Constitution. U.S. v. Sciuto, 531 F.2d 842 (7th Cir. 1976)). Thus, continued involvement in this case would result in depriving the Defendant of due process. U.S. Const., Amend. V, XIV; Ind. Const., Art. I, Section 12.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to recuse itself so that a special judge can be appointed under Criminal Rule 13 and for all other relief just and proper in the premises.

(Signature)

VERIFICATION

I affirm, under the penalties for perjury, that the foregoing representations are true.

(Signature of attorney)

NOTES

CASBANK B.7.a


Although technically a Motion to Recuse is not a Motion for Change of Judge, it may be wise to verify the Motion or attach a supporting Affidavit establishing the facts questioning the appearance of impartiality as required by CR 12 for Change of Judge Motions.


REFERENCES

Indiana Rule of Trial Procedure 79(C) (“A judge shall disqualify and recuse whenever the judge, the judge’s spouse, a person within the third degree of relationship to either of them, the spouse of such a person, or a person residing in the judge’s household: (1) is a party to the proceeding, or an officer, director or trustee of a party; (2) is acting as a lawyer in the proceeding; (3) is known by the judge to have an interest that could be substantially affected by the proceeding; or (4) is otherwise associate with the pending litigation in such fashion as to require disqualification in accordance with Canon 3(E) of the Code of Judicial Conduct”). NOTE: Although T.R. 79 sets for the procedure for selecting a special judge after recusal, so does Criminal Rule 13. Being that Criminal Rule 21 specifies that the Rules of Criminal Procedure apply over the Rule of Trial Procedure, the procedure set forth in Criminal Rule 13 shall apply where there is a conflict.


Code of Judicial Conduct, Canon 2.11 (listing the situations when a judge must disqualify himself).


CASE LAW

Everling v. State, [929 N.E.2d 1281](#)  (Ind. 2010) (evidentiary rulings, uneven tolerance for late filings and trial judge’s comments to defense counsel showed actual bias and prejudice requiring reversal of three Class A felony convictions for child molesting and two Class B felony convictions for sexual misconduct with a minor).

Hollingsworth v. State, [928 N.E.2d 201](#)  (Ind. 2010) (judge’s comments during bench trial showed he was not impartial, objective, open minded and “patient, dignified and courteous to litigants” as required by Ind. Judicial Canons 2, 2.2 (comment 1), and 2.8(b)).

State v. Smulls, [935 S.W.2d 9](#) [Shepardize](#) (Mo. 1996) (where the trial judge, in context of Batson inquiry, refused to acknowledge race of juror, saying that he did not “know what black means,” and observing that “[y]ears ago they used to say one drop of blood constitutes black,” serious questions were raised about judge’s “willingness to do what Batson requires,” and warranted his recusal from hearing petitioner’s post-conviction petition).

Calvert v. State, [498 N.E.2d 105](#)  (Ind.Ct.App. 1986) (the judge erred in refusing to recuse himself from case where he twice had appeared for prosecution against the Defendant when the case was originally filed and had obtained a court order for sample of the Defendant’s handwriting, which was admitted into evidence at present trial; the Defendant did not waive his right to request the judge to disqualify himself by failing to make a timely motion; the situation is one requiring recusal rather than routine change of judge motion).

Franklin v. McCaughtry, [398 F.3d 955](#)  (7th Cir. 2005) (“where a judge has a direct personal, substantial, or pecuniary interest [in the outcome of a case], due process is violated”).