



Judicial Recusal: When Is a Judge Disqualified from Hearing a Case?

Recent litigation arising from the Deepwater Horizon oil spill has brought attention to some federal judges' financial ties to the oil industry. The Alliance for Justice report, [Judicial Gusher: the Fifth Circuit's Ties to the Oil Industry](#), documents the energy-related assets and other industry ties of the Fifth Circuit judges. This factsheet explains the standards regarding federal judges' recusals from cases that present a conflict of interest.

The primary statute governing a judge's duty to recuse from a case is 28 U.S.C. § 455.¹ Section 455(a) sets out a broad rule that a judge must recuse him or herself when the judge's impartiality might reasonably be questioned. The test is objective, based on the mere *appearance* of partiality, and does not depend on the judge's subjective feelings. This general "appearance of partiality test" is premised on the notion that even the appearance of partiality erodes public confidence in the judiciary.²

The statute also establishes situations that require mandatory recusal. Section 455(b) sets out five specific circumstances that trigger mandatory recusal: (1) personal bias or prejudice toward a party or fact; (2) having served as or practiced with a lawyer in the matter; (3) having served in the government and participated as a judge, counsel, advisor, or material witness concerning the proceeding; (4) having a financial interest in the subject matter or any other interest that could be substantially affected by the outcome of the proceeding; or (5) if a close relative of the judge has an interest in the proceeding. Of particular note regarding the duty to recuse created by a financial conflict of interest:

- It does not matter if a judge's financial interest is "de minimis"—a single share of stock in a party before the court gives rise to a mandatory duty to recuse.³
- A judge has a duty to stay informed about his/her financial interests so as to be aware of potential conflicts.⁴
- The fact that the judge has a financial interest creates a duty to recuse that cannot be avoided by waivers of the parties involved (unlike disqualification due to the appearance of partiality, which can be waived by agreement of the parties).⁵

Importantly, a judge has an obligation to assess his or her obligation to recuse at the outset of a case – it is not necessary for the parties to raise an objection.⁶ The obligation

¹ In addition, 28 U.S.C. § 144 allows a party to file an affidavit to establish personal bias or prejudice.

² *Potashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1111 (5th Cir. 1980).

³ 28 U.S.C. § 455(d)(4) defines "financial interest" to include "ownership of a legal or equitable interest, however small..."

⁴ 28 U.S.C. § 455(c).

⁵ 28 U.S.C. § 455(e).

is ongoing, and the judge must recuse if it becomes apparent that a cause for disqualification exists.⁷ If a party believes that a judge should recuse, but has not, the party can file a motion for disqualification under Section 455, and the judge's denial of this motion can then be appealed.⁸

Judge Martin Feldman, who is currently presiding over the legal challenge to President Obama's six-month Gulf Coast offshore drilling moratorium, appears to have extensive financial ties to the oil industry. On this basis, a group of environmental organizations, appearing in the case as defendant-intervenors, have filed a motion for his disqualification. Judge Feldman denied that motion on July 16, 2010, finding it without merit. For more information on Judge Feldman's ties to the oil and gas industry, read AFJ's new [report](#).

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NOTE: For those seeking comments from legal ethicists on this issue, AFJ can provide the names of independent experts upon request.

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⁶ See Hearing on Examining the State of Judicial Recusals after *Caperton v. A.T. Massey*, Statement of the Honorable M. Margaret McKeown (Dec. 10, 2009).

⁷ *Id.*

⁸ *Id.*