AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 522 **April 8, 2026**

Lawyer's Obligation to Disclose Information About Grounds for a Judge's Disqualification

ABA Model Rule of Professional Conduct 8.4(d) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice. When a lawyer in a proceeding possesses information that the lawyer knows is reasonably likely to give rise to a judicial disqualification obligation, Rule 8.4(d) requires the lawyer, as an officer of the court, to disclose that information to the tribunal. When the lawyer possesses the information only because it is "information relating to the representation of a client," then the lawyer's disclosure obligation is subject to the lawyer's duty of confidentiality under Model Rule of Professional Conduct 1.6.

I. Introduction

ABA Model Code of Judicial Conduct ("MCJC") Rule 2.11 outlines circumstances that require judges to recuse themselves from proceedings. Rule 2.11(a) begins by setting forth the general recusal standard: "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned . . . ." It then provides a nonexclusive list of circumstances in which judges must be recused, subject in certain circumstances to the parties' waiver of disqualification.[1] Among the kinds of circumstances that may call for a judge's recusal are familial and significant personal relationships with parties or lawyers in an action, economic interests implicated by the action, and extrajudicial knowledge of or involvement in the events underlying the action.[2]

Judges are expected to raise recusal questions themselves, as they best know the relevant information. Comment [5] to Rule 2.11 instructs judges to "disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification." Comment [2] explains that "[a] judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed."

This Opinion addresses lawyers' obligations under the ABA Model Rules of Professional Conduct ("Model Rules") when the lawyer represents a client in a matter before the tribunal and a judge fails to raise the possibility of recusal, but the lawyer knows information establishing that the judge

[1] MODEL CODE OF JUDICIAL CONDUCT 2.11(A)(1)-(6). Comment [1] to Model Code of Judicial Conduct Rule 2.11 explains: "Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. In many jurisdictions, the term 'recusal' is used interchangeably with the term 'disqualification.'"

[2] Although the rule itself does not contain expansive guidance on the types of relationships that may be perceived to compromise a judge's impartiality, judicial decisions and ethics opinions collectively give considerable guidance to lawyers who learn information that may be relevant to a judge's analysis on issues related to recusal and disqualification. For example, ABA Formal Opinion 488 examines three categories of relationships between judges and lawyers or parties: (1) acquaintances, (2) friendships, and (3) close personal relationships.

must consider recusal because of the possibility that the judge's impartiality might reasonably be questioned.[3] This Opinion is limited to lawyers' ethical obligations under the Model Rules of Professional Conduct and does not address substantive recusal law or standards governing judges' disqualification obligations under the Model Code of Judicial Conduct.

II. Subject to the duty of confidentiality, Model Rule 8.4(d) requires a lawyer who knows information that is reasonably likely to give rise to a judicial recusal obligation to disclose that information to the tribunal.

Outside of ex parte proceedings, lawyers have no duty under the Model Rules to inform the tribunal of all material facts necessary to make informed judicial decisions.[4] However, in certain circumstances lawyers in judicial proceedings have a limited duty to disclose procedural or jurisdictional information, as distinct from evidentiary information. Although the obligation originates in judicial decisions, a failure to comply with the obligation may be the basis for professional discipline under Model Rule 8.4(d).

A. The Lawyer's Role as an Officer of the Court

Judicial decisions recognize that, as officers of the court, lawyers have an "overarching duty of candor to the Court,"[5] which requires certain disclosures of important procedural or jurisdictional information, even though no rule or law expressly requires such disclosure.[6] For example, in *Tiverton Board of License Commissioners v. Pastore*, 469 U.S. 238 (1985), the United States Supreme Court found that a party's lawyer was obligated to disclose that the party had gone out of business because that information made the case moot. The Court stated: "It is appropriate to remind counsel that they have a 'continuing duty to inform the Court of any development which may conceivably affect the outcome' of the litigation." *Id.* at 240.

Other judicial decisions have similarly recognized that lawyers must disclose circumstances and events with important procedural significance. These circumstances have included procedural deficiencies that, if unaddressed, could result in the denial of a fair trial and the reversal of a conviction.[7] These also include filings and decisions in other jurisdictions that may strip the court of jurisdiction, make further work by the court unnecessary, or be important to the scheduling of a

[3] The Model Rules define knowledge as "actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances." MODEL RULES OF PROF'L CONDUCT R. 1.0(f). Knowledge in the Model Rules means more than a mere possibility or suspicion.

[4] In an ex parte proceeding, Model Rule 3.3(d) requires a lawyer to "inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse." That is because in an ex parte proceeding "there is no balance of presentation by opposing advocates"; therefore, to enable the court to achieve "a substantially just result," which is the object of the proceeding, "[t]he lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision." MODEL RULES OF PROF'L CONDUCT R. 3.3, cmt. [14].

[5] Eagan by Keith v. Jackson, 855 F. Supp. 765, 790 (E.D. Pa. 1994).

[6] The Committee recognizes that there are variations among jurisdictions on how disclosure would occur. Nothing in this opinion is intended to supersede jurisdiction-specific authorities on that issue.

[7] *See, e.g.*, Holloway v. Arkansas, 435 U.S. 475, 485-86 (1978) ("[Criminal] defense attorneys have the obligation, upon discovering a conflict of interests, to advise the court at once of the problem.").

case.[8]

In some circumstances, knowing nondisclosure will be prejudicial to the administration of justice because, for example, the judge is unaware that the court lacks jurisdiction to continue the proceedings, the court would be committing a procedural error that jeopardizes the fairness of the proceedings, or the proceedings are procedurally deficient in some other legal respect.

For example, in ABA Formal Op. 280 (1949), which predates the ABA's adoption of the Model Code of Professional Responsibility, this Committee determined that, "An attorney should advise the court of decisions adverse to his case which opposing counsel has not raised if the decision is one which the court should clearly consider in deciding the case, if the judge might consider himself misled by the attorney's silence, or if a reasonable judge would consider an attorney who advanced a proposition contrary to the undisclosed opinion lacking in candor and fairness to him." This determination arose out of lawyers' duty, as officers of the court, "to aid the court in the due administration of justice" and their duties of "candor and fairness."[9]

To give another example, ABA Informal Op. 1169 (1970) concluded that it would be impermissibly deceptive and prejudicial to the administration of justice for the civil defendant's lawyer to fail to disclose the defendant's death. The Committee reaffirmed that conclusion in Formal Op. 95-397 (1995).[10] The Committee's 1995 opinion relied on *Virzi v. Grand Trunk Warehouse & Cold Storage Co.*, 571 F. Supp. 507 (E.D. Mich. 1983), which found that the plaintiff's lawyer in a personal injury action had a duty to disclose the client's death to opposing counsel and the court. The ethics opinion quoted the District Court's opinion extensively and with approval, including the court's observation that, "Although each lawyer has a duty to contend, with zeal, for the rights of his client, he also owes an affirmative duty of candor and frankness to the Court and to opposing counsel when such a major event as the death of the plaintiff has taken place." *Virzi*, *supra*, 571 F. Supp. at 512.

In other contexts, this Committee has long reached conclusions that accord with the judicial decisions on lawyers' duty of candor to the tribunal. Although the Committee's opinions offer

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[8] *See, e.g.*, Cleveland Hair Clinic, Inc. v. Puig, 200 F.3d 1063, 1067-68 (7th Cir. 2000) (plaintiff's counsel had an obligation to disclose a parallel state lawsuit, because its "goal . . . was to cut off the federal court at the pass, a development that surely could have affected the outcome of the litigation pending in federal court"); *In re* Jones, 231 B.R. 110 (Bankr. Ct., N.D. Ga. 1999) (failure to disclose parallel bankruptcy filing was impermissibly deceitful and prejudicial to the administration of justice).

[9] This obligation was later codified in Disciplinary Rule 7-106(B)(1) of the Model Code of Professional Responsibility, and it is currently codified in Model Rule 3.3(a)(2), which provides that: "A lawyer shall not knowingly . . . fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel." Model Rule 3.3(a)(2) can be understood as a reminder that the role of an advocate is not purely partisan but also carries a responsibility to protect the integrity of the judicial process itself. Much like a referee in a game depends on players to play by the rules in order for the match to be fair, courts depend on lawyers to surface controlling adverse legal authority—even when it undermines their client's position—so the court can make a fully informed decision. The lawyer's ethical responsibility under Rule 3.3(a)(2) is not merely about avoiding falsehoods but is about actively ensuring the fairness, accuracy, and legitimacy of proceedings, even at the expense of short-term client advantage.

[10] The Committee relied on Model Rule 3.3(a)(1), which addresses the duty to avoid knowingly making false statements to the tribunal and omissions that are the equivalent. The Committee's 1995 Opinion did not call into question the earlier conclusion that failing to disclose the party's death is prejudicial to the administration of justice.

various explanations and cite various rules, the unifying theme is that lawyers must be forthcoming with procedural information that the tribunal needs to ensure that the proceedings are fair.[11]

In contrast, there is ordinarily no such disclosure duty under the Model Rules when the procedural information in question does not call the court's jurisdiction into question and is not otherwise important to the fair administration of justice. ABA Formal Op. 94-387 (1994) concluded that a plaintiff's lawyer has no obligation to disclose that the statute of limitations has run on the plaintiff's claim. The opinion explained: "The running of the period provided for enforcement of a civil claim creates an affirmative defense which must be asserted by the opposing party, and is not a bar to a court's jurisdiction over the matter. A time-barred claim may still be enforced by a court, and it will be if the opposing party raises no objection."[12]

B. The Source of the Lawyer's Knowledge

Lawyers may obtain actual knowledge about a judge's need to consider recusal from a range of sources. Some of these sources may include "information relating to the representation of the client," but there could be other sources of the lawyer's knowledge.

Illustration 1: Prior Employment Connection

A prosecutor is assigned to represent the state in post-conviction proceedings. The assigned judge previously served as a supervisor in the prosecutor's office. The prosecutor learns from the file that, while working in the prosecutor's office, the judge supervised the trial prosecutor in the case. The defendant's lawyer is evidently unaware of the judge's supervisory responsibility for an earlier stage of the case, and the judge may not recall it.

Illustration 2: Campaign Contribution

A lawyer representing a party in a civil case learns from the client that the client was a major financial supporter of the presiding judge's recent judicial election campaign. The client acknowledges having made a significant contribution to a political action committee earmarked for the judge's campaign, but there is no public record of the contribution, and it is uncertain whether the judge knows of it.

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[11] *See* ABA Comm. on Ethics & Pro. Resp., Formal Op. 96-404 (1996) (a lawyer seeking appointment of a guardian for a client must disclose the lawyer's expectation of being retained by the guardian to provide future legal services); ABA Comm. on Ethics & Pro. Resp., Informal Op. 1386 (1977) (a lawyer must disclose to opposing counsel and the court that the client has entered into a "Mary Carter Agreement," under which the amount of the defendant's liability will decrease as another defendant's liability increases); ABA Comm. on Pro. Ethics & Grievances, Formal Op. 17 (1930) (if a party's lawyer moves for substitution of counsel without notice to the party's prior counsel, it would violate the duty of candor to the court to fail to disclose that notice was not given).

[12] *See also* ABA Comm. on Ethics & Pro. Resp., Formal Op. 07-446 (2007) (a lawyer need not disclose the provision of assistance to a pro se litigant, because the court is unlikely to be misled or to provide unfair assistance). *But see* Duran v. Caris, 238 F.3d 1268 (10th Cir. 2001) (lawyer's failure to disclose the provision of substantial assistance in drafting a pro se litigant's brief is impermissible deceit and conduct prejudicial to the administration of justice).

Illustration 3: Spouse's Law Firm Involvement

A lawyer learns that co-counsel for another party in a consolidated civil action has engaged the judge's spouse's law firm for related consulting work on discovery strategy. The lawyer knows of this fact because an associate from the spouse's firm copied the lawyer on an email exchange related to scheduling depositions.

Illustration 4: Counsel's Business Relationship with Judge's Family Member

A lawyer for a party in a civil action recently became a minority shareholder in a local business. The lawyer knows that the judge's adult child is an executive and major investor in the business.

In each of these illustrations, the lawyer possesses actual knowledge of facts that may reasonably require the judge to consider recusal. Whether Model Rule 8.4(d) requires the lawyer to make a disclosure depends on whether (a) the information is reasonably likely to require recusal and (b) the disclosure can be made without violating the lawyer's confidentiality obligations under Model Rule 1.6 or Model Rule 1.9.

C. Limits on the Lawyer's Obligation to Disclose

Candor to the tribunal imposes obligations beyond what the Model Rules alone enumerate. As discussed above, courts may—and often do—require lawyers to disclose jurisdictional or procedural information essential to just adjudication. While the Model Rules codify some specific disclosure requirements, they deliberately leave room for courts to define others, and failure to meet those judicially recognized duties can amount to conduct prejudicial to justice. Information that is reasonably likely to give rise to a judicial recusal obligation, if not raised by the judge, is the sort of information that a lawyer must disclose to ensure procedural fairness.[13] The failure to make this disclosure constitutes conduct prejudicial to the administration of justice under Model Rule 8.4(d).[14] Unlike information relevant to an affirmative defense based on the statute of limitations, information that is reasonably likely to require a judge's recusal is important for the judge to consider, and, unless the judge recuses, to share with the parties. Otherwise, the judge's failure to recuse may deny the parties a fair trial and constitute the kind of procedural error that necessitates overturning the result of the proceeding.

As in the situation addressed by Model Rule 3.3(a)(2)—which requires a lawyer to disclose to the tribunal legal authority in the controlling jurisdiction that is both directly adverse to the lawyer's client and not disclosed by opposing counsel—the underlying concern is about the structural integrity of the proceedings. If the lawyer knows there is a procedural flaw in the proceedings that goes to their fairness and integrity—in this case, the judge's failure to consider the recusal obligation—the lawyer must rectify that procedural deficiency.

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[13] *See In re* Bernard v. Coyne, 31 F.3d 842, 847 (9th Cir. 1994) ("Counsel for a party who believes a judge's impartiality is reasonably subject to question has not only a professional duty to his client to raise the matter, but an independent responsibility as an officer of the court.").

[14] *Cf.* State Bar of Michigan, Opinions JI-79 (1994) and J-6 (1996) (concluding, based on Michigan's Rule of Professional Conduct 8.4, that when a judge fails to disclose facts that would require the judge's recusal, a party's lawyer who knows the facts must disclose them).

This is not the kind of evidentiary information relating to the court's rulings that one may leave to the opposing party to uncover; nor may a party fairly exploit the opposing party's lack of diligence in failing to uncover this sort of information. Parties have no reason to investigate the judge's financial and familial relationships and other circumstances in search of facts that may call for a judge's recusal. As noted, that is principally the judge's responsibility. But when the judge fails to make the requisite disclosure and that failure could result in a serious procedural deficiency that jeopardizes the justness of the proceedings, the judge's nondisclosure must be corrected by a lawyer who knows the relevant information.

The obligation to disclose information requiring a judge's recusal should take account of a lawyer's duty of confidentiality. Model Rule 8.3, which requires lawyers to report certain serious judicial misconduct as well as certain serious misconduct by lawyers, provides that these reporting obligations are limited by the duty of confidentiality under Model Rule 1.6.[15] Although clients should generally be encouraged to give informed consent to their lawyer's reporting judicial misconduct pursuant to Model Rule 8.3(c), a lawyer may not disclose information relating to the representation without the client's informed consent unless there is an applicable exception to the confidentiality obligation. We conclude that the lawyer's duty to disclose a judge's possible recusal obligation is subject to the same limitation.

As this Committee recently discussed in ABA Formal Opinion 519 (2025), which addressed lawyers' disclosures in motions to withdraw from a representation, various provisions of the Model Rules may require or permit lawyers to disclose information relating to the representation to the court. When a lawyer knows information that is reasonably likely to give rise to a judicial disqualification obligation, either of two provisions may apply.

First, Model Rule 1.6(b)(6) permits a lawyer to "reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary . . . to comply with other law." As discussed above, judicial decisions recognize that, in some circumstances, lawyers' duty of candor to the court requires lawyers in judicial proceedings to disclose jurisdictional or procedural information relating to the representation. Insofar as the judicial decisions of the relevant jurisdiction extend this disclosure obligation to information regarding judicial recusal, Model Rule 1.6(b)(6) would permit disclosure to comply with other law.

Second, Model Rule 3.3(b) provides: "A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal." In some situations, such as when a client has an undisclosed personal, professional, or business relationship with the judge that is likely to require judicial recusal, the client's intent to exploit—rather than disclose—the relationship may amount to "fraudulent conduct related to the proceeding."[16] When the lawyer knows that the client plans to proceed without disclosure in order to secure an improper advantage, withdrawal alone will often be insufficient as a remedial measure. In those circumstances, the lawyer may be required to

[15] Model Rule 8.3(c) provides that the reporting obligation "does not require disclosure of information otherwise protected by Rule 1.6." Comment [2] to Rule 8.3 further clarifies: "A report about misconduct is not required where it would involve violation of Rule 1.6."

[16] MODEL RULES OF PROF'L CONDUCT R. 3.3(b) & R. 3.3, cmt. [12].

disclose the grounds for recusal or take other reasonably available steps necessary to prevent or rectify the client's fraudulent conduct. Needless to say, the lawyer may not assist in a client's fraudulent conduct. *See* Model Rule 1.2(d) & 1.16(a)(4).

Absent the client's informed consent or an applicable exception to the duty of confidentiality, however, we conclude that the duty to disclose information reasonably likely to require recusal is subject to the duty of confidentiality under Model Rule 1.6(a) when that information is "relating to the representation of a client."

III. Where Should the Lawyer Disclose the Information?

The lawyer should disclose information that is reasonably likely to require recusal to an authority capable of addressing that issue. In most instances, the lawyer may appropriately begin by disclosing the information directly to the judge, with notice to opposing counsel.[17] In other cases, disclosure to the chief judge or other designated administrative authority may be warranted, depending on the nature of the potential conflict.

It is important to remember that for many potential disqualification concerns, the judge would ordinarily be aware of sufficient information to recognize the need to engage in a disqualification analysis. Yet recent years have seen numerous reported instances in which judges failed to recuse when the circumstances warranted it. Lawyers, as officers of the court, should not only disclose information reasonably likely to require recusal that a judge may not be aware of, but also should not remain silent and allow a judge to knowingly refuse to acknowledge circumstances requiring recusal. Regardless of whether judges fail to meet their own ethical obligations, lawyers' obligations as officers of the court also require lawyers to do what they can to remedy the situation.

There can also be circumstances where a judge may not recognize the basis for disqualification as a result of procedural error or misunderstanding rather than volitional disregard of ethical duties. Judges are not infallible, and the disqualification provisions of MCJC Rule 2.11 can be complex in their application. For example, a judge might know that she owns stock in Alpha Corporation but not realize that Alpha is the parent company of Beta Corporation, a named party in the case, and thus fail to consider disqualification. If that information is reasonably likely to require the judge's recusal, the lawyer should alert the judge to the issue so that the judge can determine whether recusal or disclosure is warranted. In this way, the lawyer helps to safeguard the fairness and integrity of the proceeding, ensuring that inadvertent judicial oversights do not compromise public confidence in the impartial administration of justice.

As noted above, ABA Model Rule of Professional Conduct 8.3(b) specifically addresses lawyers' obligation to disclose judicial misconduct in certain circumstances and requires the lawyer to "inform the appropriate authority."[18] Model Rule 8.3(b) will rarely require a lawyer to report a

[17] The opposing party should be notified to avoid the risk of an improper ex parte communication between a lawyer and the judge.

[18] Model Rule 8.3(b) provides that: "A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority." Comment [3] explains: "The term 'substantial' refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware."

judge's failure to recuse as required by MCJC 2.11. The lawyer must disclose only if the lawyer personally *knows* (not merely suspects) each of three things: (1) that the judge had a recusal obligation under the MCJC Rule 2.11; (2) that the judge failed to comply with that obligation; and (3) that the judge's failure to recuse raises a substantial question as to the judge's fitness for office.[19] Ordinarily, a judge's failure to recuse will not raise a substantial question about the judge's fitness for office unless the obligation to recuse is obvious and the judge is utterly indifferent to the obligation, so that the judge's recusal violation seriously erodes public confidence in the judge's fairness and commitment to ethical compliance in general, not just in the particular case.[20] A judge's failure to consider recusal in circumstances where the obligation to recuse is uncertain would not implicate Model Rule 8.3(b), because the failure to consider recusal in such circumstances would not "raise[] a substantial question as to the judge's fitness for office." Consequently, a reporting obligation will likely arise only if the facts necessitating the judge's recusal were called to the judge's attention during the case or it is otherwise obvious that the judge was aware of the relevant facts and deliberately disregarded their significance.

IV. Conclusion

When a lawyer in a proceeding possesses information that the lawyer knows is reasonably likely to give rise to a judicial disqualification obligation, Model Rule 8.4(d) requires the lawyer, as an officer of the court, to disclose that information to the tribunal. When the lawyer possesses the information only because it is "information relating to the representation of a client" then the lawyer's disclosure obligation is subject to the duty of confidentiality under Model Rule 1.6.

[19] *See* note 3, *supra*; *see also* Hon. Deborah L. Thorne et al., *Protecting the Integrity of the Profession*, 43-JUN AM. BANKR. INST. J. 24, 24 n.5 (2024) (citing Mont. Merch. Inc. v. Dave's Killer Bread Inc., No. CV-17-26-GF-BMM, 2017 WL 4246899, at *5 (D. Mont. Sep. 25, 2017)); S.C. Bar Ethics Advisory Committee, Advisory Op. 05-04 (2005) ("Rule 8.3 requires actual knowledge of, or believing clearly that there has been a violation, which implies more than a suspicion of misconduct."). In ascertaining whether a lawyer has the requisite knowledge, the information of other lawyers in the lawyer's firm or of co-counsel is not "imputed" to the lawyer in question if they have not shared the information, and likewise, a lawyer's information is not "imputed" to other lawyers or to the lawyer's firm if the lawyer has not shared the information.

[20] *Cf.* Me. Board of Overseers of the Bar Op. 227, *Required Reporting M.R. Prof. Conduct 8.3* (2025) (explaining that lawyers must report if they know (or reasonably infer) that another attorney engaged in misconduct violating the Rules, creating a "substantial question" about that attorney's honesty, trustworthiness, or fitness to practice).