

# Supreme Court of Kentucky

FROM THE 42ND JUDICIAL CIRCUIT  
CALLOWAY AND MARSHALL CIRCUIT COURTS  
DIVISION 1

IN RE:

ALL PENDING CIRCUIT COURT CRIMINAL CASES

## ORDER GRANTING MOTION FOR DISQUALIFICATION

This matter is before the Chief Justice upon the certification of the Clerks of the Calloway and Marshall Circuit Courts of the motion and affidavit filed by Commonwealth's Attorney Dennis Foust, which seeks to disqualify the Honorable James T. Jameson, Circuit Judge for the 42nd Judicial Circuit, from presiding in all pending circuit court criminal cases in the 42nd Judicial Circuit, Calloway and Marshall counties.

The Judicial Conduct Commission (JCC) temporarily suspended Judge Jameson in August 2022. The Supreme Court reinstated Judge Jameson on October 28, 2022, because the JCC had failed to obtain the four votes necessary to suspend him under SCR 4.120. Thereafter, on November 4, 2022, the JCC issued its final order removing Judge Jameson from office.

In his affidavit, Mr. Foust states that he was subpoenaed to testify against Judge Jameson at his final disciplinary hearing before the JCC but was never called as a witness. He was also subpoenaed by Judge Jameson, through counsel, but was later notified that his attendance was not necessary. Mr. Foust further states that portions of his statement to a JCC investigator were admitted into the record during the final hearing. The statement, which included Mr. Foust's many concerns regarding Judge Jameson's activities, was also provided to Judge Jameson.

Because of Mr. Foust's statements to the JCC investigator, and because the JCC has concluded that Judge Jameson should be removed from office, Mr. Foust believes the Commonwealth will be prejudiced if Judge Jameson continues to preside over any case in which Mr. Foust is involved.<sup>1</sup>

KRS<sup>2</sup> 26A.020 authorizes the Chief Justice, when prompted by an affidavit properly certified by the circuit clerk, to "determine whether to designate a regular or retired justice or judge of the Court of Justice as special judge" in a particular case.<sup>3</sup> About the authority given to the Chief Justice when making such a determination, KRS 26A.020 is vague, and a paucity of case law exists to guide the Chief Justice's decision. However, KRS 26A.015 offers guidance regarding when disqualification is appropriate. That statute provides, among other things, that a judge "shall disqualify himself in any proceeding . . . "[w]here he has knowledge of any other circumstances in which his impartiality might reasonably be questioned."<sup>4</sup> Similarly, Rule 2.11 of the Kentucky Code of Judicial Conduct provides that "a judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned . . . ."<sup>5</sup>

On appellate review of a trial court's determination under KRS 26A.015, "consistent with . . . Rule 2.11, a judge's bias or partiality is determined under an

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<sup>1</sup> As the Commonwealth's Attorney for the 42nd Judicial Circuit, Mr. Foust represents the interest of the Commonwealth in all circuit court criminal matters.

<sup>2</sup> Kentucky Revised Statute.

<sup>3</sup> KRS 26A.020(1). It should be noted that this Court has held KRS 26A.020 to be an unconstitutional "encroachment by the legislature on the power of the judiciary to make rules." *Foster v. Overstreet*, 905 S.W.2d 504, 506 (Ky. 1995). But because it is a "statutorily acceptable' substitute for current judicially mandated procedure," *id.* at 507, and "out of deference and respect," *id.*, the Court has extended comity to the legislature. *Id.*

<sup>4</sup> KRS 26A.015(2)(e).

<sup>5</sup> Supreme Court Rule (SCR) 4.300, Canon 2, Rule 2.11(A).

objective standard from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances.”<sup>6</sup> The goal of these recusal provisions is to “avoid even the appearance of partiality so as to promote public confidence in the integrity of the judicial process.”<sup>7</sup> While the Chief Justice’s determination under KRS 26A.020 is not a review of a trial court’s decision, applying the objective standard to determine whether a judge’s impartiality might reasonably be questioned is similarly appropriate.

Having established the standard for disqualification, the question turns to whether Mr. Foust has demonstrated a disqualifying situation that requires the appointment of a special judge.

The facts established in the affidavit indicate there is sufficient evidence of animosity between Mr. Foust and Judge Jameson to warrant disqualification in all matters in which the Commonwealth is a party.<sup>8</sup> Mr. Foust gave a statement to the JCC investigator in which he expressed “many concerns” regarding Judge Jameson’s activities. That statement was provided to Judge Jameson during his final hearing. Further, although he was never called as a witness, Mr. Foust was subpoenaed to testify against Judge Jameson.<sup>9</sup> These facts, coupled with the fact that the JCC subsequently determined that Judge Jameson should be removed

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<sup>6</sup> *Phillip v. Rosquist*, 628 S.W.3d 41, 54 (Ky. 2021) (footnote omitted); *see also Abbott, Inc. v. Guirguis*, 626 S.W.3d 475, 484 (Ky. 2021) (“[A]n objective standard is appropriate for measuring whether a judge’s impartiality might reasonably be questioned from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances . . .”).

<sup>7</sup> *Alred v. Commonwealth, Jud. Conduct Comm’n*, 395 S.W.3d 417, 430 (Ky. 2012) (citing *Petzold v. Kessler Homes, Inc.*, 303 S.W.3d 467, 472 (Ky. 2010)).

<sup>8</sup> *See Abbott, Inc. v. Guirguis*, 626 S.W.3d 475, 485 (Ky. 2021).

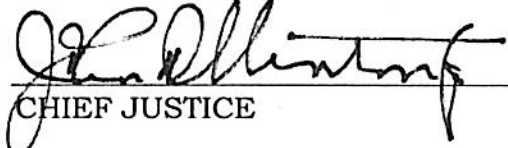
<sup>9</sup> It should be noted that Mr. Foust was also subpoenaed by Judge Jameson, through counsel, to testify but was never called as a witness.

from office, present a circumstance in which Judge Jameson's ability to impartially preside over criminal cases in the 42nd Judicial Circuit might reasonably be questioned.

For these reasons, the Chief Justice orders as follows:

- 1) The request to disqualify the Honorable James T. Jameson from all circuit court criminal cases in the 42nd Judicial Circuit is GRANTED without prejudice to any party to seek appellate review after entry of a final judgment; and
- 2) Under Section 110(5)(b) of the Kentucky Constitution, the Honorable David Buckingham, Retired Circuit Court Judge, is hereby assigned as a special judge to preside over all circuit court criminal cases in the 42nd Judicial Circuit, Calloway and Marshall counties.
- 3) The Calloway Circuit Clerk and the Marshall Circuit Clerk shall place a copy of this order in the General Orders book, distribute copies to the local bar association, and post a copy of this order in conspicuous manner in the Clerk's Office or other suitable location in the Judicial Center(s).

Entered this 9th day of November 2022.

  
CHIEF JUSTICE

Copies to: C. Rene Williams, Chief Regional Circuit Judge  
James T. Jameson, 42nd Judicial Circuit, Division One  
Tiffany Griffith, Marshall Circuit Court Clerk  
David Buckingham, Retired Circuit Court Judge