IN THE COURT OF APPEALS OF THE STATE OF OREGON

Jeanyne James; Robin Colbert; Jane Drevo; Sam Drevo; Brooke Edge and Bill Edge, Sr.; Lori Fowler; Iris Hampton; James Holland; Rachelle McMcaster; Kristina Montoya; Northwest River Guides, LLC; Shariene Stockton and Kevin Stockton, Victor Palfreyman; Palfreyman Family Trust; Duane Brunn, individually and on behalf of all others similarly situated; Alfred Cuozzo; Deborah Jo Fawcett; David Giller, Sr.; Richard Jensen; Scott Johnson; Frank King, individually and in his capacity as trustee of the King Revocable Trust; Stephen David Nielsen; Cory Staniforth; and Deborah Tank,
Plaintiffs-Respondents
Cross-Appellants,

and

Mary Kathleen Becherer et al.,
Plaintiffs,

and

Oregon Department of Justice,
Creditor-Respondent,

v.

PacifiCorp, an Oregon Corporation, and Pacific Power an Oregon registered electric utility and assumed business name of PacifiCorp,
Defendants-Appellants
Cross-Respondents.

Multnomah County Circuit Court No. 20CV33885

Court of Appeals No. A183140

ORDER DENYING MOTION TO DISQUALIFY

Plaintiffs have moved to disqualify Judge Joyce from further participation in this matter. As the court understands the motion, plaintiffs contend that Judge Joyce's prior representation of PacifiCorp, and her work on energy law matters while employed at the Markowitz Herbold law firm, means that the circumstances are such that "a reasonable person would question the judge's impartiality," requiring Judge Joyce to recuse or be disqualified under Oregon Code of Judicial Conduct Rule 3.10(A). PacifiCorp filed a response, plaintiffs filed a reply, and Judge Joyce, by letter in accordance with the process established by ORAP 8.30(3), referred the motion to the Chief Judge, having determined that she would deny the motion.

The motion is denied. In reaching this conclusion, the court notes that it places little weight on PacifiCorp's responsive filing. That is because the court views the motion for disqualification as a matter between the parties seeking disqualification and

the court, rather than a matter subject to resolution through the adversarial process. Accordingly, the court focuses on the content of plaintiffs' motion and reply, and on Judge Joyce's letter addressing her conclusion that the motion should be denied. In so doing, the court credits the factual background outlined in Judge Joyce's letter. The court does so because nothing submitted in connection with plaintiffs' motion casts doubt on the veracity of that factual recitation. On that point, the court observes that plaintiffs acknowledged in their reply to PacifiCorp's response that their motion rested on at least one incorrect factual assertion: that Judge Joyce received compensation from Markowitz Herbold during 2023.

As noted, plaintiffs' theory, as the court understands it, is that Judge Joyce's prior representation of PacifiCorp specifically, and her work on energy law matters generally while at the Markowitz Herbold law firm, require the conclusion that a reasonable person would question Judge Joyce's impartiality in this matter, therefore mandating her recusal or disqualification.

Judge Joyce's prior representation of PacifiCorp, however, was narrow in scope. The matters in which she represented PacifiCorp were unrelated to this one. To the extent that Judge Joyce represented other clients in connection with energy matters, none of those matters appear related to this one and the court rejects the notion that it is objectively reasonable to question a judge's impartiality in a case simply because the judge, as lawyer, worked in an area of law or business sector related to the case, or because the judge otherwise developed expertise in a particular area of law.

Beyond that, plaintiffs have not identified other facts that would call Judge Joyce's impartiality into question. More to the point, unlike *Savoy v. Miller*, 346 Or App 134, 584 P3d 229 (2025), and *Matter of Schwartz v. Battini*, 296 Or App 870, 440 P3d 292 (2019), cases on which plaintiffs rely, plaintiffs have pointed to no words or conduct by Judge Joyce evidencing an inability to be fair and impartial in this case. In *Savoy*, the trial judge had "disclosed that he did not think he could trust anything that the defense said, given his view that [defense counsel] had been dishonest with him." *Savoy*, 346 Or App at 145. We concluded that the judge's "expressed personal bias" against the attorney would cause a reasonable person to doubt the judge's impartiality in a case involving that attorney. *Id*. Similarly, in *Schwartz*, the trial judge had "repeatedly indicated, without qualification, that she [would] not hear [the] party's case because she [could not] be fair to that party." *Schwartz*, 296 Or App at 875. As in *Savoy*, we concluded that those record statements would cause a reasonable person to question the judge's ability to be impartial. *Id.* at 879. In each of those cases, a judge had explicitly communicated that the judge could not be fair but proceeded to participate in the case anyway. In each instance, we recognized that it is objectively reasonable for a person to question a judge's impartiality when the judge has stated that they can't be fair, even if the judge backtracks later. In essence, we recognized that it is objectively reasonable to take a judge at the judge's word when the judge states that they doubt their ability to be fair. This case involves nothing similar.

Finally, although the court has been unable to locate cases on point from Oregon, other courts have addressed similar circumstances. That authority, of course, is not binding on this court, but the court is persuaded by the analysis in the cases and the other authority cited in Judge Joyce's letter. As that authority indicates, the determination whether a reasonable person would question a judge's impartiality is an objective one that accounts for the realities that (a) to become a judge, a person must be a lawyer first; and (b) that lawyers must advocate for their clients without necessarily identifying or agreeing with those clients. *See*, *e.g.*, *Philip Morris USA Inc. v. United States Food & Drug Admin*., 156 F Supp 3d 36, 50 (DDC 2016). Said another way, in evaluating whether a reasonable person would question a judge's impartiality, the court considers the "reasonable person" to be a well-informed observer who possesses an understanding of the respective roles of lawyers, law firms and judges, and who does not presume that a person's work as a lawyer calls into question the person's impartiality as a judge. *Id*. at 49-50 (discussing the concept). The factors relevant to the assessment of whether a judge's prior work as lawyer requires disqualification on the ground that a reasonable person would question a judge's impartiality "include the nature of the prior representation, the duration of the attorney-client relationship, the extent to which it might relate to the current case, and the lapse of time between the prior representation and the current case." *State v. Ellis*, 153 NH 67, 69, 889 A2d 1, 3 (2005).

Those factors each weigh against disqualification under the circumstances present here. The nature of the prior representation was minimal. The duration of the attorney-client relationship was short. The matters were not related to this one, and the representation ended four years before this case was assigned to the department of this court to which Judge Joyce is assigned. And, as mentioned, there are no other facts calling into question Judge Joyce's impartiality. Under those circumstances, the court is unpersuaded that there is a basis for Judge Joyce's disqualification.

Motion to disqualify denied.

Erin C. Lagesen
Chief Judge
7/20/2026

c: Brad Daniels
Yoona Park
Per A Ramfjord

Reilley Keating
Daniel Mensher
Keith A Ketterling
Timothy S DeJong
Cody Berne
Emily Johnson
Erin Roycroft
Nicholas A Kahl
Matthew Preusch
Sarah R Osborn
Derek C Johnson
Marilyn A Heiken
Alexander Glenn Tievsky
Blaine Evanson
Matthew Kalmanson
John Pruitt
Meghana Shah
Sara Kobak
Ivan Resendiz Gutierrez
Jeremy C Rice
Paul Stewart
Irion Sanger
John Greene
J Aaron Landau
Jeremy Marwell
Lydia Anderson Dana
Carsen Nies
Elizabeth Savage
Matthew S Kirkpatrick
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Robert Koch
Nicholas Holle Rosinia
Todd Logan