To Recuse or Not to Recuse? That is the Question

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When should a media defendant move to recuse the presiding judge in a defamation case? The decision to file a recusal motion is rarely an easy one. The bar for recusal is high, and most litigants understandably are hesitant to risk an unsuccessful motion that would leave their case in the hands of a judge whose impartiality they have formally questioned. It may become clear to a defendant, however, that the presiding judge is predisposed to favor the opposing party. In the defamation context, for example, the subject of the allegedly defamatory publication may be a relative, colleague or political ally of the judge. Perhaps the particular media defendant has been a harsh critic of the judge, or perhaps the judge's past opinions or actions reveal an animus towards the particular media defendant. In these situations and others, recusal may be warranted. In extreme cases, recusal may even be constitutionally required.

Attorney

- Landis C. Best