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Judge airs past ties to Hastert

Durkin gives both sides until Thursday to seek his recusal

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Nothing prevents U.S. District Judge Thomas M. Durkin from presiding over the criminal case against former U.S. House Speaker Dennis Hastert, a lawyer who has handled judicial ethics said today.

If either the prosecution or defense had asked that Durkin be disqualified, Robert P. Cummins said, "I don't think that motion could have passed muster."

However, he continued, Durkin made the right move when he offered to disqualify himself in light of his connections to Hastert and to lawyers in the case.

"I commend the judge," Cummins said. "In a high-profile case like this, the judge is the loser if he doesn't take the most conservative view of the situation."

Cummins, an attorney with The Cummins Law Firm P.C. in Chicago and with Norman, Hanson & DeTroy LLC in Portland, Maine, is a past chairman of Illinois' Judicial Inquiry Board. He is not involved in Hastert's case.

Hastert is accused of structuring withdrawals of "hush" money from his bank accounts to avoid reporting requirements and then lying to the FBI about the matter.

At Hastert's arraignment Tuesday, Durkin disqualified himself from the case. But he opened the way for prosecutors and defense attorneys to overturn that decision.

He gave both sides until 4 p.m. Thursday to waive his disqualification.

Durkin disclosed that he

contributed to Hastert's campaign for the U.S. House of Representatives — \$500 in 2002 and \$1,000 in 2004 — long before he was appointed to the federal trial court.

Several years before his 2013 appointment, he sent an e-mail to a Hastert staff member as part of a bid for a position on the bench, Durkin said, "but nothing came of it."

Durkin said he and Hastert's son, Ethan A. Hastert, were "friendly business colleagues" when both worked at Mayer, Brown LLP.

When Durkin was a federal prosecutor, he said, he interacted with Assistant U.S. Attorneys Steven A. Block and John N. Gallo.

Block and Assistant U.S. Attorney Carrie E. Sussman, who practices law under the name Carrie Hamilton, are prosecuting the case against Hastert.

Gallo, now with Sidley, Austin LLP, is defending Hastert with Thomas C. Green of the firm's Washington, D.C., office.

Durkin assured the parties his ties with Hastert and the lawyers would not affect his ability to be fair.

"I have no doubt I can be impartial in this matter," he said.

However, he continued, he realizes reasonable observers might question his impartiality.

If the vote for waiver is unanimous, he will remain on the case, Durkin said. If one side objects, he said, he will step aside and the case will be reassigned at random to another judge.

The lawyers are to file any letters waiving Durkin's disqualification with Thomas G. Bruton, the trial court's clerk.

Bruton will not reveal the identity of any party or lawyer who declines to waive Durkin's disqualification.

Tinos Diamantatos, a former federal prosecutor now with Morgan, Lewis & Bockius LLP, did not address the details of



Thomas M. Durkin

Hastert's case.

But he said "the smart thing to do" when a judge has ties to lawyers or litigants in a case is to reveal those ties and let the parties decide whether the judge should step aside.

With this practice, Diamantatos said, "everything is out in the open."

And he said this process promotes respect for the judicial process.

T. Markus Funk, who served as a federal prosecutor in Chicago before joining Perkins, Coie LLP in Denver, said Durkin's situation is not unusual.

In practicing law, particularly in a city like Chicago, "there will be a myriad of personal and professional relationships among lawyers," said Funk, who is with the firm's white collar and commercial litigation practices.

Many of those relationships, he said, "may have taken place, or were in place, long before a particular lawyer is elevated to the federal bench."

Federal court rules recognize this reality and, therefore, require judges to "to be candid about their prior dealings and relationships" with the lawyers and litigants who appear before them, Funk said.

In some cases, such as when a judge previously served as a lawyer in the case or has a

financial interest in the outcome of the case, he said, the rules are absolute and require judges to step aside.

"Those kind of conflicts cannot be waived," he said. "It's black and white."

In other situations, disqualification is not required, Funk said.

He said those situations fall under the statutory catch-all provision covering when a federal judge's "impartiality might reasonably be questioned."

Following the judge's full disclosure on the record of the basis for the potential disqualification, the parties are permitted to waive the judge's disqualification and keep the judge on the case, Funk said.

Based on the public record, he said, Durkin appears to be proceeding on the basis that the potential disqualification is of "this broad and waivable variety."

An indictment returned May 28 alleges Hastert agreed to pay \$3.5 million to compensate an unidentified person for "past misconduct" on Hastert's part as well as to buy that person's silence.

The person is identified only as Individual A, but the indictment suggests he or she was someone Hastert knew when he was a teacher and wrestling coach at Yorkville High School in Kendall County from 1965 to 1981.

From June 2010 through April 2012, the indictment alleges, Hastert made 15 withdrawals of \$50,000 each.

After he was questioned by bank officials, the indictment alleges, Hastert withdrew another \$952,000 in increments of less than \$10,000.

Hastert structured the withdrawals that way to prevent the banks from filing the currency transaction reports that are required by federal law for any transaction involving \$10,000 or more, the indictment alleges.

When Hastert was questioned

about the withdrawals by FBI agents in December 2014, it alleges, he falsely claimed he wanted to store the cash himself because he did not trust the banking system.

Hastert is charged with one count of making a false statement to the FBI and one count of structuring transactions to evade the transaction reporting requirement.

Each count carries a maximum statutory penalty of five years in prison and a \$250,000 fine.

United States v. John Dennis Hastert, No. 15 CR 315.

Hastert, a Republican, represented Illinois' 24th Congressional District in the House from 1987 until his retirement in 2007. He served as speaker from for the last eight years of that time.

Durkin also acknowledged that one of his brothers is state House Republican leader James B. Durkin of Western Springs, a partner at Arnstein & Lehr LLP.

Hastert worked as a lobbyist with Dickstein, Shapiro LLP in Washington after he left the House. He resigned from the firm within hours of his indictment.

Today, Cummins said he

doesn't believe there is any reason to question Durkin's impartiality.

But he praised Durkin's actions.

"It sends a message to the public that our judges are concerned that justice is not just fair but is seen to be fair," Cummins said. "It sends a message to the public and to our profession."