

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

**Christopher Mathiesen v. Timothy P. Burns, Jeffrey J. Funke,
Stephanie F. Stacy, William B. Cassel, Jonathan J. Papik, Jason M.
Bergevin, John R. Freudenberg, Lindsey Miller-Lerman, Ryan
Dougherty, Cody S. Barnett, Christian T. Williams, Keith A. Harvat,
and Justin D. Eichmann**

Mathiesen · No. 8:25CV716 · Decided February 9, 2026

SUMMARY

The United States District Court for the District of Nebraska denied Christopher Mathiesen’s motion to disqualify the Nebraska Attorney General from representing several state court judges in their official and individual capacities. The court found no present actual material conflict of interest. The court also denied without prejudice Mathiesen’s motion for leave to amend because he failed to comply with the local rule requiring an unsigned proposed amended complaint identifying the proposed amendments.

CASE DETAILS

COURT	United States District Court for the District of Nebraska
WRITING FOR THE COURT	Jacqueline M. DeLuca
JURISDICTION	United States District Court for the District of Nebraska
DECIDED	February 9, 2026
DOCKET	8:25CV716
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved to disqualify the Nebraska Attorney General from representing certain defendants in their official and individual capacities and moved under Federal Rule of Civil Procedure 15(a)(2) for leave to amend to add parties and an abuse-of-process claim.
STANDARD OF REVIEW	The moving party bears the burden of proving that disqualification is required. Motions to disqualify counsel are subject to particularly strict scrutiny because of their potential for abuse. Leave to amend under Rule 15(a)(2) is committed to the court's discretion, subject to the applicable federal and local rules.

PRECEDENTIAL VALUE

Unpublished district court memorandum and order; no precedential designation appears in the source.

TOPICS

[motion to amend](#) [civil procedure](#) [pleadings](#) [civil rights](#)

PRACTICE AREAS

[Civil procedure](#) [Legal ethics and attorney disqualification](#) [Civil rights litigation](#)

QUESTIONS PRESENTED

1. Whether the Nebraska Attorney General should be disqualified from representing state court judges in their official and individual capacities based on a concurrent conflict of interest.
2. Whether Plaintiff should be granted leave under Federal Rule of Civil Procedure 15(a)(2) to file a second amended complaint adding parties and an abuse-of-process claim despite failing to comply with the local rule governing amendment motions.

HOLDINGS

1. Representation of a state official in both official and individual capacities does not, by itself, create a concurrent conflict of interest. Disqualification requires an actual material conflict; a potential conflict arising from differing possible defenses is insufficient until it matures into an actual material conflict.
2. Leave to amend was properly denied without prejudice because Plaintiff failed to comply with the local rule requiring an unsigned copy of the proposed amended complaint that clearly identifies the proposed amendments.

KEY QUOTATIONS

“Separate representation is not required until any ‘potential conflict matures into an actual material conflict.’” (I. Motion to Disqualify)

“When it comes to disqualifying counsel at the pretrial stage, the Court of Appeals takes a very dim view of such a ruling.” (I. Motion to Disqualify)

“A district court appropriately denies the movant leave to amend if ‘there are compelling reasons such as undue delay, bad faith, or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the non-moving party, or futility of the amendment.’” (II. Motion to Amend)

FACTUAL BACKGROUND

The Nebraska Attorney General represented several Nebraska state court judges in both their official and individual capacities, and Plaintiff sought disqualification based on an asserted concurrent conflict of interest. Plaintiff identified only theoretical or potential differences between the State's interests and the judges' individual interests and did not show an actual material conflict. Plaintiff also sought to add Joshua R. Shasserre

and Jennifer A. Huxoll as parties and add an abuse-of-process claim, but did not file the proposed second amended complaint required by the local rules.

PROCEDURAL HISTORY

Plaintiff had already amended his complaint once. He then filed a motion to disqualify counsel and a second motion for leave to amend. The district court denied the disqualification motion and denied the amendment motion without prejudice because Plaintiff failed to submit a signed proposed amended complaint clearly identifying the proposed amendments.

DISPOSITION

other

CASES CITED

- Awnings v. Fullerton, 912 F.3d 1089, 1096 (8th Cir. 2019)
- J. Swanson & Co., LLC v. Rejuvenating Nutrition Coaching, LLC, No. 23-cv-1323, 2024 WL 4544137, at *5 (D. Minn. Apr. 25, 2024)
- Sundquist v. Nebraska, No. 8:14CV220, 2015 WL 6118515, at *1-*2 (D. Neb. Oct. 16, 2015)
- Harker v. Comm'r, 82 F.3d 806, 808 (8th Cir. 1996)
- Turner v. AIG Domestic Claims, Inc., 823 F. Supp. 2d 899, 905 (D. Neb. 2011)
- Christians v. Young, No. 4:20-CV-4083, 2024 WL 4291285, at *1-*2 (D.S.D. Sept. 25, 2024)
- Johnson v. Bd. of Cnty. Comm'rs for Cnty. of Fremont, 85 F.3d 489, 493 (10th Cir. 1996)
- Dunton v. Suffolk Cnty., 729 F.2d 903, 907 (2d Cir. 1984)
- Sherman v. Winco Fireworks, Inc., 532 F.3d 709, 715 (8th Cir. 2008)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA
CHRISTOPHER MATHIESEN, Plaintiff, 8:25CV716 vs. MEMORANDUM AND ORDER
TIMOTHY P. BURNS, JEFFREY J. FUNKE, STEPHANIE F. STACY, WILLIAM B. CASSEL,
JONATHAN J. PAPIK, JASON M. BERGEVIN, JOHN R. FREUDENBERG, LINDSEY
MILLER-LERMAN (IN HER OFFICIAL CAPACITY), RYAN DOUGHERTY, LINDSEY
MILLER-LERMAN (IN HER INDIVIDUAL CAPACITY), CODY S. BARNETT, CHRISTIAN
T. WILLIAMS, KEITH A. HARVAT, and JUSTIN D. EICHMANN, Defendants.

Before the Court is Plaintiff’s Motion to Disqualify Counsel for [sic] Individual Capacities, Filing No. 45, and Plaintiff’s Rule 15(a)(2) Motion for Leave to Amend to Add Necessary Joinders and New Cause of Action. Filing No. 79. Both motions are denied as set forth herein.

I. Motion to Disqualify (Filing No. 45). Plaintiff moves to disqualify the Nebraska Attorney General from concurrently representing several state court judges¹ in their official and individual

capacities. It is 1 The Honorable Timothy P. Burns, Jeffrey J. Funke, Stephanie F. Stacy, William B. Cassel, Jonathan J. Papik, Jason M. Bergevin, and John R. Freudenberg.

The Honorable Lindsey Miller-Lerman is also a named defendant, but she retired from the Nebraska Supreme Court in 2025, and the Attorney General is Plaintiff's burden to prove disqualification is required. See *Awnings v. Fullerton*, 912 F.3d 1089, 1096 (8th Cir. 2019).

The Court must resolve "legitimate doubts... in favor of disqualification." *J. Swanson & Co., LLC v. Rejuvenating Nutrition Coaching, LLC*, No. 23-cv-1323, 2024 WL 4544137, at *5 (D. Minn. Apr. 25, 2024) (quoting citation omitted).

However, due to "the potential for abuse by opposing counsel, disqualification motions should be subjected to particularly strict judicial scrutiny." *Sundquist v. Nebraska*, No. 8:14CV220, 2015 WL 6118515, at *1 (D. Neb. Oct. 16, 2015) (quoting *Harker v. Comm'r*, 82 F.3d 806, 808 (8th Cir. 1996)). "When it comes to disqualifying counsel at the pretrial stage, the Court of Appeals takes a very dim view of such a ruling." *Id.* (quoting *Turner v. AIG Domestic Claims, Inc.*, 823 F. Supp. 2d 899, 905 (D.

Neb. 2011)). "When considering whether an attorney should be disqualified from representing a party, the court may consider the ABA code or Rules of professional conduct, any rules of professional conduct adopted by the district court, the court's duty to maintain public confidence, and the court's duty to [e]nsure the integrity of judicial proceedings." *Sundquist*, No. 8:14CV220, 2015 WL 6118515, at *1.

This Court adopted the Nebraska Rules of Professional Conduct. NEGenR 1.8(a). In relevant part, the Nebraska Rules of Professional Conduct prohibit a lawyer from representing a client when "the representation involves a concurrent conflict of interest." § 3-501.7(a). A concurrent conflict of interest exists if "the representation of one client will be directly adverse to another client" or "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client[.] § 3-501.7(a).

The client may waive the concurrent conflict of interest in writing in certain circumstances. § 3-501.7(b). As an initial matter, contrary to Plaintiff's assertions, it is well established that the Attorney General is not prohibited from representing a party in their individual capacity. See *Christians v. Young*, No. 4:20-CV-4083, 2024 WL 4291285, at *2 (D.S.D.

Sept. 25, 2024) (collecting cases rejecting this argument under various state's laws). Nebraska law only representing Justice Miller-Lerman in her official capacity. Additionally, after filing the motion to disqualify, Plaintiff amended his Complaint, Filing No. 67, in part to add Nebraska Solicitor General Cody S. Barnett.

The Attorney General is also representing Barnett in his official and individual capacities but Plaintiff has not moved to challenge this representation. authorizes the Attorney General “to appear for the state and... defend... any cause or matter, civil or criminal, in which the state may be a party or interested.” Neb. Rev. Stat. § 84-203. At this stage, and with the evidence currently before the Court, the Attorney General is not prohibited from representing the state court judges in their individual capacities in this action.

Plaintiff also argues the Attorney General is disqualified from representing the judges in their individual and official capacities because there is a concurrent conflict of interest. Simply representing a party in their official and individual capacities does not create a conflict of interest. Whether a conflict exists is assessed on a case-by-case basis. See *Christians*, No. 4:20-CV-4083, 2024 WL 4291285, at *1 (Attorney General has the same obligation as any other attorney to assess whether a conflict of interest has arisen).

When the Attorney General represents an official in their individual and official capacities, a conflict could arise due to “differing and potentially conflicting defenses.” *Sundquist*, No. 8:14CV220, 2015 WL 6118515, at *2 (quoting *Johnson v. Bd. of Cnty. Comm’rs for Cnty. Of Fremont*, 85 F.3d 489, 493 (10th Cir. 1996)).

For example, a conflict could arise when the government entity and the individual disagree about whether the individual was acting within the scope of their official duties. See *Dunton v. Suffolk Cnty.*, 729 F.2d 903, 907 (2d Cir. 1984) (county attorney should have been disqualified from representing officer in his individual capacity when the county argued defendant assaulted a man as an angry husband—the man was engaged in sexual relations with the officer’s wife—and not as a police officer).

But a potential conflict due to different defenses available to an official sued in their official and individual capacities is not enough. *Sundquist*, No. 8:14CV220, 2015 WL 6118515, at *2. “Separate representation is not required until any ‘potential conflict matures into an actual material conflict.’” *Id.* (quoting *Johnson*, 85 F.3d at 493).

Here, Plaintiff does not meet his burden of proving a conflict currently exists between the State’s interests and the interests of the state court judges in their individual capacities. Plaintiff argues theoretical conflicts may exist or arise later in this litigation, but he fails to identify an actual material conflict that would disqualify the Attorney General from representing the judges in their individual capacities.

Whether Plaintiff believes the judges acted outside the scope of their employment is irrelevant. The question is whether the State believes the judges acted outside the scope of their employment. The State is not taking this position. Filing No. 72; Filing No. 85; Filing No. 38. There is nothing

indicating a conflict currently exists between the State's interests and the interests of the state court judges in their individual capacities.

Since there is not a concurrent conflict of interest, there is no need to address whether the judges executed a signed waiver—there is no conflict to waive. Plaintiff's motion to disqualify the Attorney General as counsel for certain state court judges in their individual capacities is denied. II. Motion to Amend (Filing No. 79). Plaintiff moves to amend the Amended Complaint to join Joshua R. Shasserre and Jennifer A. Huxoll as parties and to add a new cause of action for abuse of process.

Plaintiff has already amended his complaint once. Accordingly, he may only amend his complaint a second time "with the opposing party's written consent or the court's leave." Fed. R. Civ. Proc. 15(a)(2). Plaintiff's motion is denied because he failed to comply with the local rules. He failed to file an unsigned copy of his proposed second amended complaint that clearly identifies the proposed amendments.

NECivR 15.1(a). The motion will be denied without prejudice to allow Plaintiff a chance to comply with the local rules. Plaintiff is warned, however, that the Court will not grant a motion to amend if the motion is brought in bad faith to harass defendants. See *Sherman v. Winco Fireworks, Inc.*, 532 F.3d 709, 715 (8th Cir. 2008) (quoting citation omitted) ("A district court appropriately denies the movant leave to amend if 'there are compelling reasons such as undue delay, bad faith, or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the non-moving party, or futility of the amendment.'").

The Court is concerned that Plaintiff is seeking leave to amend to add an attorney who works for the Attorney General's Office simply because she is representing some of the defendants and filed a brief on their behalf. Plaintiff is reminded that, despite his pro se status, he is bound to comply with all applicable law, including the Federal Rules of Civil Procedure and this Court's local rules.

CONCLUSION Accordingly, IT IS ORDERED: 1) Plaintiff's Motion to Disqualify Counsel for Individual Capacities, Filing No. 45, is denied. 2) Plaintiff's Rule 15(a)(2) Motion for Leave to Amend to Add Necessary Joinders and New Cause of Action, Filing No. 79, is denied without prejudice. Dated this 9th day of February, 2026. BY THE COURT: s/ Jacqueline M. DeLuca
United States Magistrate Judge