



Connecticut Committee on Judicial Ethics

Informal Opinion Summaries

2022-06 (September 2, 2022¹)

Appearance of Impropriety; External Influences; Disqualification

Rules 1.2, 2.1, 2.4, 2.7, and 2.11; C.G.S. §§ 4-183, 12-117a, and 12-119

Issue: Should a Judicial Official (JO), an appellate jurist, who with his or her spouse has a personal residential tax appeal pending before the Tax and Administrative Appeals Session of the Superior Court (Tax Session), recuse himself or herself from deciding any or all matters appealed from the Tax Session to the appellate tribunal on which the JO sits.

Facts: The JO and his or her spouse have a personal, residential tax appeal pending before the Tax Session located at the New Britain Superior Court. On the upcoming docket of the appellate tribunal, is an appeal of a decision issued by the Tax Session. The question posed by the JO is whether he or she must recuse himself or herself from any or all appeals taken from the Tax Session.

Additional Facts: General Statutes §§ 12-117a and 12-119 govern filing of tax appeals and both statutes provide that those appeals must be filed in the judicial district where the town or city is situated. General Statutes § 4-183 (c), part of the Uniform Administrative Procedures Act (UAPA), provides that a person appealing a decision by an administrative agency shall, "file the appeal with the clerk of the superior court for the judicial district of New Britain or for the judicial district wherein the person appealing resides or, if that person is not a resident of this state, with the clerk of the court for the judicial district of New Britain."

Typically, both tax appeals and administrative appeals, if not originally filed with the Tax Session, are transferred to that court session, which is what occurred in the present

¹ The Committee considered this matter at a Special Meeting held on September 2, 2022, in accommodation of the JO's request that it be considered on an expedited basis. After discussion, the Committee unanimously concluded that the JO must recuse himself or herself from deciding all matters appealed from the Tax Session to the appellate tribunal on which the JO sits while the JO's personal tax appeal is pending with the Tax Session. The Committee then directed the Secretary to orally advise the JO of the Committee's opinion and to prepare a draft written summary of the opinion for the next regular meeting of the Committee.

situation. Currently one presiding judge and two judge trial referees are assigned to the that session of court.

By policy, the Connecticut Supreme Court sits en banc in all cases. The Connecticut Appellate Court sits in panels of 3. It may sit en banc on order of the Chief Judge, on motion of a party or sua sponte. See Practice Book Section 70-7.

Relevant Code provisions and Case Law: Rules 1.2, 2.1, 2.4, 2.7, and 2.11.

Rule 1.2 of the Code of Judicial Conduct provides that a judge “shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.”

Rule 2.4 (b) provides that a judge “shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment.”

Rule 2.11, in relevant part, provides that:

(a) A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge’s spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(A) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party; ...

(C) a person who has more than a de minimis interest that could be substantially affected by the proceeding; ...

(3) The judge knows that he or she, individually or as a fiduciary, or the judge’s spouse, domestic partner, parent, or child, or any other member of the judge’s family residing in the judge’s household, has an economic interest in the subject matter in controversy or in a party to the proceeding. ...

COMMENT: (1) Under this Rule, a judge is disqualified whenever the judge’s impartiality might reasonably be questioned, regardless of whether any of the specific provisions of subsections (a) (1) through (5) apply. ... (2) A judge’s

obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed. ...

The following is the standard for recusal or disqualification of a judge:

The standard to be employed is an objective one, not the judge's subjective view as to whether he or she can be fair and impartial in hearing the case. ... 'Any conduct that would lead a reasonable [person] knowing all the circumstances to the conclusion that the judge's "impartiality might reasonably be questioned" is a basis for the judge's disqualification....'

Papa v. New Haven Federation of Teachers, 186 Conn. 725, 744-746 (1982) (internal citations omitted). In *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 292 Conn. 1 (2009), the Court further explained that:

Disqualification is required even when no actual bias has been demonstrated if a judge's impartiality might reasonably be questioned 'because the appearance and the existence of impartiality are both essential elements of a fair exercise of judicial authority.' (Internal quotation marks omitted.) *State v. Webb, supra*, 460-61; see also R. Flamm, *Judicial Disqualification* (1996) § 5.4.1, p. 150 ('Judicial decisions rendered under circumstances suggesting bias or favoritism tend to breed skepticism, undermine the integrity of the courts, and generally thwart the principles upon which our jurisprudential system is based. Since an appearance of bias may be just as damaging to public confidence in the administration of justice as the actual presence of bias, acts or conduct giving the appearance of bias should generally be avoided in the same way as acts or conduct that inexorably bespeak partiality.'). Indeed, prevention of the appearance of impropriety is of vital importance to the judiciary and to the judicial process. *Bonelli v. Bonelli*, 214 Conn. 14, 19, 570 A.2d 189 (1990).

Rosado, at 20-21. See also, *Hoffkins v. Hart-D'Amato*, 187 Conn App. 227 (2019).

Rule 2.7 provides that a judge "shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law." The comment to that rule provides that judges "must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring disfavor to the court and to the judge personally. ..."

Relevant Opinion: In [JE 2020-06](#), the Committee considered whether a Judicial Official, an appellate jurist whose term of office was soon to expire and who sought to be re-nominated by the Governor within that time period, must disqualify himself or herself in a case brought against the Governor challenging as unconstitutional specific acts taken by the Governor in issuing executive orders. In that matter, the Committee

concluded that “that mere proximity in time to a Judicial Official’s re-nomination by the governor, without more, does not require automatic disqualification from a case challenging action taken by the Governor in his official capacity. ... Automatic disqualification in cases involving the Governor’s official acts would require frequent recusal and arbitrary determinations regarding the proximity in time of a particular case to the expiration of a Judicial Official’s term of appointment.”

Discussion: There are myriad circumstances that may present to a JO that will require the JO to consider disqualification and recusal and the instant inquiry is atypical of the matters previously decided by this Committee under the relevant Code provisions.

Unlike the situation that was presented in [JE 2020-06](#), the relationship between consideration of an appeal from the Tax Session by the submitting JO, and the JO’s case at the tax court is not too attenuated for his or her impartiality to be reasonably questioned.

Here, the JO and his or her spouse have brought the underlying tax appeal, the Tax Session is a session of the Superior Court with limited jurisdiction and with only one presiding judge and two, presumably part time, judge trial referees assigned to hear matters before it, and the JO sits on one of two appellate tribunals whose membership is limited and which may sit en banc in all or some lesser number of the matters before it.

Based on the facts presented, the Committee concluded that the JO should, at a minimum, disqualify himself or herself in all matters appealed from the Tax Session to the appellate tribunal on which the JO sits while the JO’s personal tax appeal is pending in the Tax Session.