

**Committee on Judicial Ethics**  
**Regular Meeting**  
**Thursday, September 15, 2022**

Committee members present via *Microsoft Teams*: Judge James T. Graham (Chair), Judge Robert B. Shapiro, Judge Vernon D. Oliver, Professor Carolyn W. Kaas, and Judge Karen A. Goodrow (Alternate). Staff present: Attorney Joseph J. Del Ciampo, Attorney Viviana L. Livesay, and Carolina E. Marin.

**MINUTES**

- I. Judge Graham called the meeting to order at 9:31 a.m. Although publicly noticed, no members of the public were present.
- II. Judges Shapiro, Oliver and Goodrow approved the minutes of the September 2, 2022, Special Meeting. Judge Graham abstained from voting.
- III. The Committee considered **Informal JE 2022-06**<sup>1</sup> concerning whether 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), must 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

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<sup>1</sup> 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 should 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.

Judges Oliver, Goodrow, and Shapiro approved the summary as amended by Attorney Del Ciampo and Judge Goodrow. Judge Graham and Professor Kaas abstained.

- IV. The Committee considered **Formal JE 2022-07** concerning whether a Judicial Official must automatically recuse himself from a pending dissolution of marriage case after an attorney of record reports that he consulted with a lawyer who works at a large Connecticut law firm with which the Judicial Official has a personal connection. The Judicial Official’s connection to the law firm: (1) the chairman of the firm is a close friend and (2) the law firm handled legal work for the Judicial Official around two to three years ago.

The Committee concluded that Rules 1.2 and 2.11(a) of the Code of Judicial Conduct apply to this matter. Rule 1.2 states that a judge “should 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 2.11 (a) states that:

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;
  - (B) acting as a lawyer in the proceeding;
  - (C) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or
  - (D) likely to be a material witness in 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.
- (4) The judge has made a public statement, other than in a court proceeding, judicial decision, or opinion that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.
- (5) The judge:
  - (A) served as a lawyer in the matter in controversy or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;
  - (B) served in governmental employment and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy; or
  - (C) was a material witness concerning the matter.

There are two initial objective questions to consider when determining if disqualification is required. The first is whether disqualification is mandated under the specific circumstances

in the Code of Judicial Conduct. Where, as in this inquiry, none of the enumerated circumstances in Rule 2.11 applies, the second question is whether the judge's impartiality might nonetheless be reasonably questioned. See [New York Advisory Opinion 14-90](#). If disqualification is not mandated under the objective standards of those two questions, the Committee has previously stated that a judge "is ordinarily in the best position to assess whether in a particular proceeding the judge's impartiality might reasonably be questioned..." See [Connecticut JE 2016-14](#). Of course, if a judge questions his or her own ability to be impartial in a particular matter, then he or she must not preside.

There is no indication in the present inquiry that the Judicial Official has any direct relationship, either social, professional, or otherwise, with any of the attorneys appearing before the Judicial Official in the dissolution matter. The Committee has advised that, even where a judge has a social relationship with an attorney that may require disqualification when that attorney appears, the duty to disqualify does not automatically extend to the attorney's law firm colleagues. (See [Connecticut JE 2010-28](#), no duty to automatically disqualify from presiding over a motion to reconsider involving a friend's law firm; [Connecticut JE 2011-06](#), a judge who has a close friendship with the Attorney General does not have a duty to automatically disqualify himself or herself when a member of the Attorney General's Office appears; [Connecticut JE 2014-03](#), a judge does not have an automatic duty to recuse or disclose his or her relationship with a former partner or former law firm when members of the newly merged law firm (comprised of members of the former law firm) appear before the judge; [Connecticut JE 2016-12](#), judge who has a close personal relationship with a State's Attorney may preside over criminal cases that are tried by Assistant State's Attorneys who work under the supervision of a State's Attorney.)

In [Connecticut JE 2013-45](#), this Committee determined that a judge may preside over juvenile cases involving the juvenile prosecutor's office where a prosecutor from that office previously consulted with an attorney (former law partner of judge's spouse) about an unrelated criminal matter. The Committee likewise believed that a judge's impartiality cannot "reasonably be questioned" merely because an attorney appearing before him has consulted with a lawyer who works at the law firm that handled legal work for the judge several years ago and that is managed by a close friend.

Based on the facts presented, and consistent with Rule 2.11, the Committee unanimously determined that there is no ethical requirement for the Judicial Official to automatically recuse himself from the pending dissolution of marriage case after learning that an attorney of record has consulted with a lawyer who works at the law firm managed by the Judicial Official's close friend and that handled legal work for the Judicial Official more than two years ago. Absent an appearance from the law firm in question, mere consultation with an attorney associated with the firm is too tenuous a connection to require disqualification.

The Committee approved the Formal Opinion letter as amended by Judge Shapiro. Judge Goodrow kindly agreed to proofread the final version prior to sending to the Judicial Official.

- V. New Business: The Committee discussed reappointments and replacements for members who have served past their appointment term. Judge Graham will raise reappointments and replacements with the Chief Court Administrator's office.
- VI. The meeting adjourned at 9:54 a.m.