

2009 Ethics Quiz for Federal Judges

Do you think you know ethics? The Committee on Codes of Conduct invites you to test your “EQ”—Ethics Quotient. This quiz focuses on recusal obligations that may arise from financial and other conflicts of interests. Answers and explanations are set forth below. Look for the famous case clues in the questions to answer the bonus trivia challenge at the end!

Does the Code of Conduct for United States Judges advise you to recuse in the following situations?

1. You own shares in a mutual fund, TEIPF (The Exploding Investment Packages Fund), and have been assigned a case in which the mutual fund’s management company (Money Train) is a named party.
2. You own stock in Japanese-American Investment Corp., and it has a controlling interest in a subsidiary company, American Movers. American Movers is a party in a case assigned to you.
3. You decide to shift your stock investment from Japanese-American Investment Corp. to its subsidiary American Movers, and now Japanese-American is a party in a case assigned to you.
4. Step Two Gas and Electric Company, a public utility, is a party to a proceeding before you, and you are a customer of Step Two.
5. You serve as a trustee of a family trust, which owns stock in Dreadful Properties, a real estate investment company. Dreadful Properties is appearing before you as a party.
6. Your minor child recently inherited stock valued at \$500 in Midwestern Cartography Services, Inc., and the company is a party in a proceeding before you.
7. You own municipal bonds issued by New London, CT, and New London is a party in a matter assigned to you.
8. Your spouse serves on the board of directors of Midnight Delivery Service, Inc., and MDS is appearing as a party in a case before you.
9. Your spouse is an equity law partner, and the firm (Bay, Ta & Maxx, LLP) is representing a party before you.
10. Your spouse is a partner in a small accounting firm (Chan, Nelson, Strom & Tallities, LLP) and your spouse’s major, sustaining client (Substantial FX Production Co.) is a party before you.
11. Your spouse is an officer of a charitable organization, Reproductive Health Resources. RHR owns stock in a company, Penumbra Private Eyes, that is a party in a case before you.
12. Your child is employed as an associate by an Arizona law firm (Rhee, Mayne, Tsai & Lundt, LLP) that appears before you.
13. Your child is an Assistant United States Attorney in your district in Miami-Dade County, and you have been assigned a high profile criminal case. Your child is not acting as counsel, and is not otherwise involved in the case.

14. Your spouse is employed as a school librarian by the city government in Topeka, and the city is a party before you.
15. You are assigned a case involving a client of your former law firm, Young & Steel. You represented the former client, Executive Power Source, Inc., on an unrelated matter seven years ago.
16. A party to a case before you is an acquaintance who lived in the same apartment building in New Orleans with you 20 years ago (naturally in a separate (though equally cramped) apartment).
17. Grace Lime, who is a party to a case before you, is a personal friend. She is your regular social companion, and traveled with you on a recent trip to see the great cathedrals of Western Europe.
18. A large law firm, Kannal & Kannal, represents a party (State Line Rail Road) in a case before you. One of K&K's attorneys represents you in an unrelated matter.
19. A law firm that established a scholarship at a Michigan law school in your name appears before you.
20. Mr. G. Wayne is being prosecuted for fraud, including for defrauding Right Choice Bank and Sixth Sense Investment Corp. You own a small amount of stock in Right Choice and Sixth Sense. The criminal case against Wayne is assigned to you. Wayne is convicted and you order restitution for Right Choice and Sixth Sense.

Bonus trivia challenge!

Can you identify each of the famous cases according to the hints in the question?

All materials referenced may be located on the J-Net in the redesigned *Guide to Judiciary Policy*, Volume 2, Part A, Chapter 2 ([Canons of the Code of Conduct for United States Judges](#)), and on the Judges Ethics site at [Advisory Opinions](#).

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ANSWERS

Does the Code of Conduct for United States Judges advise you to recuse in the following situations?

1. You own shares in a mutual fund, TEIPF (The Exploding Investment Packages Fund), and have been assigned a case in which the mutual fund's management company (Money Train) is a named party.

NO. A judge's investment in the mutual fund does not convey an ownership interest in the fund's management company. Recusal is required if the judge owns stock in the management company itself. *Canon 3C(1)(c); Advisory Opinion No. 106 ("Disqualification Based on Ownership of Mutual or Common Investment Funds")*.

2. You own stock in Japanese-American Investment Corp., and it has a controlling interest in a subsidiary company, American Movers. American Movers is a party in a case assigned to you.

YES. A judge must recuse if the judge is able to determine that the corporate parent whose stock the judge owns has a controlling interest in a subsidiary that is a party in a case before the judge. When a parent company does not own all or a majority of stock in the subsidiary, the judge should determine whether the parent has control of the subsidiary; the 10% disclosure requirement in Fed. R. App. P. 26.1 is a benchmark measure of parental control. *Canon 3C(1)(c); Advisory Opinion No. 57 ("Disqualification Based on Stock Ownership in Parent Corporation of a Party or Controlled Subsidiary of a Party")*.

3. You decide to shift your stock investment from Japanese-American Investment Corp. to its subsidiary American Movers, and now Japanese-American is a party in a case assigned to you.

NO. A judge who owns stock in a subsidiary company does not have a financial interest in the parent company and must recuse when the parent is a party only if the interest could be substantially affected by the proceeding. *Canon 3C(1)(c)*.

4. Step Two Gas and Electric Company, a public utility, is a party to a proceeding before you, and you are a customer of Step Two.

NO. A judge's mere status as a utility ratepayer (or as a taxpayer, in a case involving a government entity) is not in itself disqualifying. If the outcome of the proceeding could uniquely affect the amount to be paid by the judge to the utility (or in taxes) disqualification under Canon 3C(1)(c) would be required. *Canon 3C(1)(c); Advisory Opinion No. 78 ("Disqualification When a Judge Is a Utility Ratepayer or Taxpayer")*.

5. You serve as a trustee of a family trust, which owns stock in Dreadful Properties, a real estate investment company. Dreadful Properties is appearing before you as a party.

YES. A judge has a duty to be informed regarding the trust's investments and to disqualify if the trust has a financial interest in a party. *Canon 3C(1)(c) and 3C(2)*.

6. Your minor child recently inherited stock valued at \$500 in Midwestern Cartography Services, Inc., and the company is a party in a proceeding before you.

YES. If the child is a minor residing in the judge's household, any stock the child owns is attributable to the judge and requires the judge to recuse. *Canon 3C(1)(c)*.

7. You own municipal bonds issued by New London, CT, and New London is a party in a matter assigned to you.

NO. A judge's ownership of debt securities generally does not require recusal unless the litigation could substantially affect the value of the securities. *Canon 3C(1)(c) and 3C(3)(c)(iv); Advisory Opinion No. 101 ("Disqualification Due to Debt Interests")*.

8. Your spouse serves on the board of directors of Midnight Delivery Service, Inc., and MDS is appearing as a party in a case before you.

YES. A relationship as a director or other "active participant in the affairs of a party" is considered a financial interest in the company. *Canon 3C(1)(d)(i) and 3C(3)(c)*.

9. Your spouse is an equity law partner, and the firm (Bay, Ta & Maxx, LLP) is representing a party before you.

YES. As a law firm equity partner, the judge's spouse is considered to have "an interest that could be substantially affected by the outcome of the proceeding" in all cases where the law firm represents a party before the judge. *Canon 3C(1)(c) and 3C(1)(d)(iii); Advisory Opinion No. 58 ("Disqualification When Relative is Employed by a Participating Law Firm")*.

10. Your spouse is a partner in a small accounting firm (Chan, Nelson, Strom & Tallities, LLP) and your spouse's major, sustaining client (Substantial FX Production Co.) is a party before you.

YES. If a judge knows that a particular company appearing before the judge is the prime or sole client of the spouse's small business, and a ruling in the case could jeopardize the client's continued existence, the spouse would have an interest that could be substantially affected by the case and the judge should therefore recuse. *Canon 3C(1); Advisory Opinion No. 107 ("Disqualification Based on Spouse's Business Relationships")*.

11. Your spouse is an officer of a charitable organization, Reproductive Health Resources. RHR owns stock in a company, Penumbra Private Eyes, that is a party in a case before you.

NO. Holding an office in an educational, religious, charitable, fraternal, or civic organization does not constitute a financial interest in any securities held by the organization. *Canon 3C(3)(c)(ii)*.

12. Your child is employed as an associate by an Arizona law firm (Rhee, Mayne, Tsai & Lundt, LLP) that appears before you.

NO. Recusal is not required unless the judge's child has an equity interest in the law firm (e.g., is a firm equity partner), works on the matter before the judge, or has an interest that could be substantially affected by the outcome of the proceeding. *Advisory Opinion No. 58 ("Disqualification When Relative is Employed by a Participating Law Firm")*.

13. Your child is an Assistant United States Attorney in your district in Miami-Dade County, and you have been assigned a high profile criminal case. Your child is not acting as counsel, and is not otherwise involved in the case.

NO. Judges whose relatives are attorneys in government employment must recuse in all cases handled by the relative, or for which the relative bears some responsibility; but recusal is not necessary in other cases involving the agency or office. *Canon 3C(1)(d)(ii); Adv. Op. No. 38 (“Disqualification When Relative Is an Assistant United States Attorney”).*

14. Your spouse is employed as a school librarian by the city government in Topeka, and the city is a party before you.

NO. The judge need not recuse in cases involving the library or the city, unless the judge’s spouse is personally involved in the case or the judge’s interests (or those of the spouse) would be substantially affected by the outcome. *Canon 3C(1)(c),(d).*

15. You are assigned a case involving a client of your former law firm, Young & Steel. You represented the former client, Executive Power Source, Inc., on an unrelated matter seven years ago.

NO. The judge’s impartiality cannot reasonably be questioned in these circumstances. The judge should consider, however, several factors in these situations, including the length of time that has passed since the judge represented the client; the nature, duration and intensity of the relationship; and any ongoing personal relationships with the former client. *Canon 3C(1).*

16. A party to a case before you is an acquaintance who lived in the same apartment building in New Orleans with you 20 years ago (naturally in a separate (though equally cramped) apartment).

NO. The judge’s impartiality cannot reasonably be questioned in these circumstances. *Canon 3C(1).*

17. Grace Lime, who is a party to a case before you, is a personal friend. She is your regular social companion, and traveled with you on a recent trip to see the great cathedrals of Western Europe.

YES. The judge’s impartiality could reasonably be questioned in these circumstances, so the judge should recuse, subject to remittal. *Canon 3C(1) and 3D.*

18. A large law firm, Kannal & Kannal, represents a party (State Line Rail Road) in a case before you. One of K&K’s attorneys represents you in an unrelated matter.

YES. The judge should recuse, absent remittal, because his or her impartiality could reasonably be questioned. *Canon 3C(1) and 3D.*

19. A law firm that established a scholarship at a Michigan law school in your name appears before you.

YES. The judge should recuse (subject to remittal) for a reasonable time following contributions made by an attorney or law firm that established a scholarship in the judge’s name. *Canon 3C(1) and 3D.*

20. Mr. G. Wayne is being prosecuted for fraud, including for defrauding Right Choice Bank and Sixth Sense Investment Corp. You own a small amount of stock in Right Choice and Sixth Sense. The criminal case against Wayne is assigned to you. Wayne is convicted and you order restitution for Right Choice and Sixth Sense.

NO. A judge who has a financial interest in the victim of a crime is not required to disqualify from the criminal proceeding, but the judge must do so if the judge's impartiality might reasonably be questioned or if the judge has an interest that could be substantially affected by the outcome of the proceeding. *Canon 3C(1) and 3C(1)(d)(iii)*.

Bonus trivia challenge!

Can you identify each of the famous cases according to the hints in the question?

Answers:

- (1) *Palsgraf v. Long Island Railroad Co.* (NY 1928)
- (2) *Korematsu v. United States* (1944)
- (3) *Korematsu v. United States* (1944)
- (4) *Chevron v. NRDC* (1984)
- (5) *Dred Scott v. Sandford* (1857)
- (6) *Mapp v. Ohio* (1961)
- (7) *Kelo v. City of New London* (2005)
- (8) *Marbury v. Madison* (1803)
- (9) *Sony Corp. v. Universal City Studios* (1984)
- (10) *United States v. Lopez* (1995)
- (11) *Griswold v. Connecticut* (1965)
- (12) *Miranda v. Arizona* (1966)
- (13) *Bush v. Gore* (2000)
- (14) *Brown v. Board of Education* (1954)
- (15) *Youngstown Sheet & Tube v. Sawyer* (1952)
- (16) *Plessy v. Ferguson* (1896)
- (17) *Lemon v. Kurtzmann* (1971)
- (18) *Erie Railroad Co. v. Tompkins* (1938)
- (19) *Grutter v. Bollinger* (2003)
- (20) *Gideon v. Wainright* (1963)

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