

Judicial Recusal Ethics

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Introduction

- “Recusal is the process by which a trial court voluntarily removes itself, while disqualification is the process by which a party seeks to remove a judge from the case”

Forrest v. State, 904 So. 2d 629 n.1 (Fla. Dist. Ct. App. 2005)

- “In many jurisdictions, the term ‘recusal’ is used interchangeably with the term ‘disqualification’”

ABA Model Code Jud. Conduct 2.11 cmt. 1 (2007)

Introduction

- “A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned”

ABA Model Code Jud. Conduct, Canon 3E(1) (1990)

Introduction

- “A judge shall hear and decide matters assigned to the judge except those in which disqualification is required”

ABA Model Code Jud. Conduct, Canon 3B(1) (1990)

Introduction

- “There is as much an obligation for judge not to recuse himself when there is no occasion for him to do so as there is for him to do so when there is”

United States v. Burger, 964 F.2d 1065 (10th Cir. 1992)



Introduction

- “[W]hen a judge recuses himself or herself frequently, attorneys and litigants may well be encouraged to use recusal motions as a means of judge shopping”

Virginia Jud. Ethics Adv. Op. 01-8

Introduction

- “Recusal motions should not be used as strategic devices to ‘judge shop’”

McCann v. Commc'ns Design Corp., 775 F.Supp. 1506 (D.Conn.1991)

Introduction

- Attorney sanctioned under Federal Civil Rule 11 and 28 U.S.C. § 1927 for groundless, bad faith and untimely motion to disqualification judge

Perkins v. General Motors Corp., 965 F.2d 597, 601-02 (8th Cir. 1992)

- Attorney sanctioned for frivolous, malicious, improper and unsupported motion to disqualification judge

Trackwell v. B & J P'ship, Ltd., 437 F.Supp.2d 1052, 1062 (D. Neb. 2006)



Question 1

- The judge maintains a Facebook page and has several lawyer “friends.” One of the judge’s Facebook “friends” is opposing counsel on your case assigned to the judge
 - What are the disqualification or recusal considerations?
 - Should judges be able to use social media websites to interact with lawyers and others who might appear before them?

Question 2

- You tried a case, lost and appealed. The appellate court agreed with you and reversed for a new trial
- The same judge will preside but has personal knowledge of disputed evidentiary facts because previous trial and has made rulings adverse to your client
 - Is the judge disqualified from sitting on the case?

Question 3

- Your client seeks postconviction relief in Guam Superior Court where the judge has made several pre-trial rulings adverse to your client. Acting pro se, your client has sued the judge in federal court and made an ethics complaint based on some of those rulings
 - Is the Guam Judge disqualified from presiding in the postconviction relief case?

Question 4

- The judge's brother was Director of the Guam Department of Labor. The brother has moved to a different job. The Department has been sued on a matter going back in time to when the brother worked at Department
 - Must the judge recuse?

Question 5

- The judge's daughter is president of a bank that was robbed. The daughter was not present and was not a witness in the criminal case. However, the bank brought a civil suit against the robber for damages
 - Can the judge remain on the case?
 - If recusal is required, can the parties waive the judge's disqualification?

Question 6

- The brother of the judge's best friend is a party appearing in court. Is recusal required?

Question 7

- Does judge's personal acquaintance with a lawyer require disqualification?

Question 8

- Does judge's personal acquaintance with a party require disqualification?

Question 9

- The judge has a home mortgage from Big Bank, which is now a party to litigation
Must the judge recuse?

Question 10

- Sparky Electric Company provides power to judge's home. Company has a case before that judge. Must judge recuse?

Question 11

- The judge owns stock in corporation Dividend, Inc., which has a subsidiary called LittleCash, Ltd., a plaintiff before the judge. Is the judge disqualified from sitting on the case?

Question 12

- The judge's adult married daughter is a technology manager for a law firm. Is judge disqualified from that firm's cases?

Question 13

- To retaliate against the judiciary for a particular ruling they dislike, the Legislature and the Governor enact a law retroactively reducing every active and *pro tempore* judge's pay by 25 percent. A group of judges sue
 - Who decides the case?

1 **7 G.C.A. § 6105 Guam Code Annotated**

2 § 6105. Grounds of disqualification.

3 (a) Any Judge shall disqualify himself or herself in any proceeding in which his or her
4 impartiality might reasonably be questioned, but if, following complete disclosure to all parties in
5 the proceeding of the reasons for disqualification, all parties agree to having the Judge continue
6 to sit in the proceedings, he or she need not disqualify himself or herself.

7 (b) A Judge shall also disqualify himself or herself in the following circumstances, but if,
8 following complete disclosure to all parties in the proceeding of the reasons for his or her
9 disqualification, all parties agree to having the Judge continue to sit in the proceedings, he or she
10 need not disqualify himself or herself:

11 (1) Where he or she has a personal bias or prejudice concerning a party, or personal
12 knowledge of disputed evidentiary facts concerning the proceeding;

13 (2) Where in private practice he or she served as a lawyer in the matter in controversy, or
14 a lawyer with whom he or she previously practiced law served during such association as
15 a lawyer or either has been a material witness concerning the matter;

16 (3) Where he or she has served in governmental employment and in such capacity
17 participated as counsel, advisor or material witness concerning the proceeding or, as such
18 government employee, expressed an official opinion concerning the merits of the
19 particular matter in controversy;

20 (4) Where he or she knows that he or she, individually or as a fiduciary, or his or her
21 spouse or minor child residing in his or her household, has a financial interest in the
22 subject matter in controversy or is a party to the subject matter in controversy or is a party
23 to the proceeding, or in any other interest that could be substantially affected by the
24 outcome of the proceeding;

25 (5) Where he or she or his or her spouse, or a person within the third degree of
26 relationship to either of them, or the spouse of such person:

27 (i) is a party to the proceeding, or an officer, director, or trustee of a party;

28 (ii) is acting as a lawyer in the proceeding;

29 (iii) is known by the Judge to have an interest that could be substantially affected
30 by the outcome of the proceeding;

31 (iv) is to the Judge's knowledge likely to be a material witness in the proceeding.

32 (c) A Judge should inform himself or herself about his or her personal and fiduciary interests and
33 that of his or her spouse and minor children residing in his of her household.

34 (d) For the purpose of this section the following words or phrases shall have the meanings
35 indicated:

36 (1) Proceeding includes pre-trial, appellate review or other stage of litigation;

37 (2) The degree of relationship is calculated according to the civil law system;

38 (3) Fiduciary includes such relationships as executor, administrator, trustee and guardian;

39 (4) Financial interest means ownership of a legal or equitable interest, however small, or
40 a relationship as a director, advisor or other active participant in the affairs of a party,

80 proceeding pending before him or her, it shall be his or her duty to declare the same in open court
81 and cause a memorandum thereof to be entered in the minutes. It shall be the duty of the clerk to
82 transmit forthwith a copy of such memorandum to each party or his or her attorney who shall
83 have appeared in such action or proceeding, except such parties as are presented in person or by
84 attorney when the declaration is made.

85 **7 G.C.A. § 6107 Guam Code Annotated**

86 § 6107. Objection to competency; procedure.

87 Whenever a Justice or Judge who shall be disqualified under the provisions of this Chapter to sit
88 or act as such in any action or proceeding pending before him or her neglects or fails to declare
89 his or her disqualification in the manner provided by this Chapter, any party to such action or
90 proceeding who has appeared therein may present to the court and file with the clerk a written
91 statement objecting to the hearing of such matter or any trial of any issue of fact or law in
92 such action or proceeding before such Justice or Judge, and setting forth the fact or facts
93 constituting the ground of the disqualification of such Justice or Judge. Copies of such written
94 statement shall forthwith be served by the presenting party on each party, or his or her attorney,
95 who has appeared in the action or proceeding and on the Justice or Judge alleged in such
96 statement to be disqualified.

97 Within ten (10) days after the service of such statement as above provided, or ten (10) days after
98 the filing of any statement, whichever is later in time, the Justice or Judge alleged therein to be
99 disqualified may file with the clerk his or her consent in writing that the action or proceeding
100 continue without him or her, or may file with the clerk his or her written answer admitting or
101 denying any or all of the allegations contained in such statement and setting forth any additional
102 fact or facts material or relevant to the question of his or her disqualification. The clerk shall
103 forthwith transmit a copy of the Justice's or Judge's consent or answer to each party or his or her
104 attorney who shall have appeared in such action or proceeding. Every such statement and every
105 answer shall be verified in the manner prescribed for the verification of pleadings. The statement
106 of a party objecting to the Justice or Judge on the ground of his or her disqualification shall be
107 presented at the earliest practicable opportunity after his or her appearance and discovery of the
108 facts constituting the ground of the Justice's or Judge's disqualification, and in any event before
109 the commencement of the hearing of any issue of fact in the action or proceeding before such
110 Justice or Judge.

111 No Justice or Judge who shall deny his or her qualification shall hear or pass upon the question
112 of his or her own disqualification, but in every case the question of the Justice's or Judge's
113 disqualification shall be heard and determined by some other Judge. The Presiding Judge, or next
114 senior Judge, if it is the Presiding Judge's disqualification that is being requested, shall make
115 such assignment within five (5) days after receiving from the clerk the notice that the statement
116 of disqualification has been filed. In the case of a Justice's disqualification, the matter shall be
117 heard by the Supreme Court constituted without the questioned Justice.

118 If such Judge admits his or her disqualification, or files his or her written consent that the action

119 or proceeding be tried before another Judge, or fails to file the answer within the ten (10) days
120 allowed, or if it shall be determined after the hearing that he or she is disqualified, the action or
121 proceeding shall be heard and determined by another Judge of the Superior Court who is not
122 disqualified. Such other Judge shall be assigned in the same manner as the Judge who was
123 disqualified was assigned to hear the case initially.

124 If such Justice admits his or her disqualification, or files his or her written consent that the action
125 or proceeding be tried without his or her participation, or fails to file the answer within the ten
126 (10) days allowed, or if it shall be determined after hearing that he or she is disqualified, the
127 action or proceeding shall be heard and determined by the Supreme Court with the participation
128 of an Associate Justice pro tempore, appointed as provided in § 6108 of this Title.

129 1985 Source: Portions of § 170, CCP of California.

1 **28 U.S.C. § 144. Bias or prejudice of judge**

2 Whenever a party to any proceeding in a district court makes and files a timely and sufficient
3 affidavit that the judge before whom the matter is pending has a personal bias or prejudice either
4 against him or in favor of any adverse party, such judge shall proceed no further therein, but
5 another judge shall be assigned to hear such proceeding.

6 The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and
7 shall be filed not less than ten days before the beginning of the term at which the proceeding is to
8 be heard, or good cause shall be shown for failure to file it within such time. A party may file
9 only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record
10 stating that it is made in good faith.

11 **28 U.S.C. § 455. Disqualification of justice, judge, or magistrate judge**

12 (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any
13 proceeding in which his impartiality might reasonably be questioned.

14 (b) He shall also disqualify himself in the following circumstances:

15 (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge
16 of disputed evidentiary facts concerning the proceeding;

17 (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer
18 with whom he previously practiced law served during such association as a lawyer
19 concerning the matter, or the judge or such lawyer has been a material witness concerning
20 it;

21 (3) Where he has served in governmental employment and in such capacity participated
22 as counsel, adviser or material witness concerning the proceeding or expressed an opinion
23 concerning the merits of the particular case in controversy;

24 (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing
25 in his household, has a financial interest in the subject matter in controversy or in a party
26 to the proceeding, or any other interest that could be substantially affected by the outcome
27 of the proceeding;

28 (5) He or his spouse, or a person within the third degree of relationship to either of them,
29 or the spouse of such a person:

30 (i) Is a party to the proceeding, or an officer, director, or trustee of a party;

31 (ii) Is acting as a lawyer in the proceeding;

32 (iii) Is known by the judge to have an interest that could be substantially affected
33 by the outcome of the proceeding;

34 (iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

35 (c) A judge should inform himself about his personal and fiduciary financial interests, and make
36 a reasonable effort to inform himself about the personal financial interests of his spouse and
37 minor children residing in his household.

38 (d) For the purposes of this section the following words or phrases shall have the meaning

39 indicated:

40 (1) “proceeding” includes pretrial, trial, appellate review, or other stages of litigation;

41 (2) the degree of relationship is calculated according to the civil law system;

42 (3) “fiduciary” includes such relationships as executor, administrator, trustee, and
43 guardian;

44 (4) “financial interest” means ownership of a legal or equitable interest, however small, or
45 a relationship as director, adviser, or other active participant in the affairs of a party,
46 except that:

47 (i) Ownership in a mutual or common investment fund that holds securities is not
48 a “financial interest” in such securities unless the judge participates in the
49 management of the fund;

50 (ii) An office in an educational, religious, charitable, fraternal, or civic
51 organization is not a “financial interest” in securities held by the organization;

52 (iii) The proprietary interest of a policyholder in a mutual insurance company, of a
53 depositor in a mutual savings association, or a similar proprietary interest, is a
54 “financial interest” in the organization only if the outcome of the proceeding
55 could substantially affect the value of the interest;

56 (iv) Ownership of government securities is a “financial interest” in the issuer only
57 if the outcome of the proceeding could substantially affect the value of the
58 securities.

59

60 (e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver
61 of any ground for disqualification enumerated in subsection (b). Where the ground for
62 disqualification arises only under subsection (a), waiver may be accepted provided it is preceded
63 by a full disclosure on the record of the basis for disqualification.

64 (f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate
65 judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after
66 substantial judicial time has been devoted to the matter, because of the appearance or discovery,
67 after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or
68 her spouse or minor child residing in his or her household, has a financial interest in a party
69 (other than an interest that could be substantially affected by the outcome), disqualification
70 is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as
71 the case may be, divests himself or herself of the interest that provides the grounds for the
72 disqualification.

Table of Consanguinity

				4 Great-Great Grand Parents
			3 Great Grand Parents	5 Great Grand Uncles/Aunts
		2 Grand Parents	4 Great Uncles/Aunts	6 First Cousins Twice Removed
	1 Parents	3 Uncles/Aunts	5 First Cousins Once Removed	7 Second Cousins Once Removed
Judge	2 Brothers Sisters	4 First Cousins	6 Second Cousins	8 Third Cousins
1 Children	3 Nephews Nieces	5 First Cousins Once Removed	7 Second Cousins Once Removed	9 Third Cousins Once Removed
2 Grand Children	4 Grand Nephews/Nieces	6 First Cousins Twice Removed	8 Second Cousins Twice Removed	10 Third Cousins Twice Removed
3 Great Grand Children	5 Great Grand Nephews/Nieces	7 First Cousins Thrice Removed	9 Second Cousins Thrice Removed	11 Third Cousins Thrice Removed