

DISQUALIFICATION & RECUSAL OF JUDGES

SUMMARIES OF JUDICIAL ADVISORY ETHICS OPINIONS FROM THE WEBSITE OF THE AMERICAN JUDICATURE SOCIETY (www.ajs.org)

2005

Alabama- A judge who read a letter written by a party to a Congressman and forwarded to the judge is not disqualified from the case where the judge promptly disclosed the communication to the parties and did not develop a personal bias or prejudice concerning a party.

Illinois- A judge is not disqualified from cases involving a lawyer who was retained by the judge six years before the judge's appointment to assist the judge in responding to a letter from the Attorney Registration and Disciplinary Commission where the lawyer was paid and the ARDC took no action. The judge is not required to disclose the former relationship.

New York- A judge who is running for election should recuse when attorneys who are engaged in fund-raising or other active support of the judge's candidacy appear before the judge during the campaign. If the attorneys held leadership positions or maintained a continuing fund-raising role throughout the campaign, recusal should extend for two years for two years following the election, subject to remittal. A judge is not required to recuse from a case involving an individual listed as a supporter of the candidate either prior to or after the election provided the judge believes he/she can be fair and impartial.

Oklahoma- A judge must disclose the prior relationship when a former employer or client is a party and recuse, if asked to do so, for an extended time subsequent to the termination of the relationship, but is not forever precluded from sitting on a case involving a former client or employer if the judge has continuing relationship.

Oklahoma- A judge is not required to recuse when an attorney represented the judge in a personal legal matter over three years previously.

Oklahoma- A judge is not required to recuse when an attorney appearing before a judge put up yard signs in the judge's recent judicial campaign and donated \$50 but should disclose the relationship.

Oklahoma- A judge is not disqualified from cases involving the judge's unsuccessful opponent from the last general election where the judge asserts that he or she feels no bias or prejudice unless the judge believes, based on

whether the election was heated, that the public would question the ability of the judge to act impartially.

Oklahoma- After two years, a judge is no longer required to disclose prior professional relationships with attorneys appearing in the judge's court.

2004

Alabama - A judge should recuse from a case in which the judge will have to determine the propriety of conduct of an attorney who regularly appears before the judge, based in part, on assessment of the testimony of other attorneys who appear before the judge and have cases pending in the judge's court.

Alabama-A judge is not disqualified from a criminal case involving a defendant upon whom the judge imposed the maximum sentence in a prior case and whose ex-wife the judge represented in her unrelated divorce from the defendant 30 years ago.

Florida- A judge should disqualify himself or herself when an attorney or any member of the attorney's law firm appears before the judge and the judge has a close social relationship with the attorney for 28 years, the attorney served as the judge's campaign treasurer and will serve in the same capacity in 2004, and the attorney represented the judge in a personal injury lawsuit 11 years ago.

Nevada- A judge is disqualified from civil eviction cases brought by a friend who is an owner of apartment complexes with whom the judge discusses eviction matters and has a social relationship.

Alabama- A judge hear a divorce action in which one party was the judge's opponent in a judicial election in 1990.

Arizona- A judge is disqualified from cases involving an attorney who has announced his or her intention to run against the judge in the next election. A judge is not disqualified from cases involving the judge's defeated opponent in a previous election.

New York- A new judge who will be receiving compensation in concluding a business relationship with a former law partner is disqualified from cases in which the former law partner appears for two years after the last payment to the judge. A judge is disqualified from cases in which the judge's cousin's spouse appears as an attorney subject to remittal.

New York- A judge is not disqualified from a case involving an attorney who had previously represented a close relative of the judge but should disclose the prior representation for two years following the end of the representation.

New York- A judge is disqualified from a case in which one of the attorneys or another participant has submitted an affidavit or other statement on the judge's behalf to the State Commission on Judicial Conduct unless the judge discloses those facts and the parties remit.

South Carolina- A judge whose son is a law clerk or attorney at a law firm is disqualified from contested cases involving the firm, but the disqualification may be remitted.

Washington- A judicial officer is not disqualified from a case in which a personal friend is counsel absent additional circumstances.

Alabama- A judge may not hear matters involving an attorney who is currently representing the judge in an unresolved, unrelated, personal matter even while the matter is inactive, but the disqualification ceases, absent special circumstances, when the matter is resolved and representation ceases.

New York- Subject to remittal, a judge should, for two years after leaving a law firm, disqualify himself or herself whenever the law firm appears in both contested and uncontested matters; after two years, the judge should disclose the former relationship and consider recusal if a party objects. A judge who sits on the board of directors of a charitable foundation should not preside in a case in which the foundation is a party.

New York- A judge should recuse where attorneys involved in planning a fund raiser for the judge's election campaign (or their partners or associates) appear before the judge during the campaign, and in cases where the other party is appearing *pro se*, the disqualification cannot be remitted.

South Carolina- A judge is not disqualified from matters in which the judge's first cousin appears as an attorney or a witness provided the judge can be impartial, but the judge should disclose the relationship on the record.

Alabama- A judge whose daughter is a substitute teacher intending to seek permanent employment in the county public school system is not disqualified from a case in which some members of the school board are defendants.

New York- A judge is not disqualified from cases in which one of the parties is a bank or financial institution that holds the mortgage on the judge's residence or the judge's automobile loan and has issued credit cards to the judge.

New York- A judge is disqualified from cases in which a police officer that rents an apartment to the judge's child appears before the judge.

New York- A judge must disqualify where an attorney who represents the judge's child appears before the judge, subject to remittal.

New York- A judge is disqualified from cases in which an attorney who represented the judge and members of the judge's family appears within two years of the representation and should disclose the relationship after two years and consider all relevant factors in determining whether to recuse.

Alabama- A judge is not disqualified from a case in which one of the parties has written a letter to the local newspaper that may be viewed as criticizing the local judicial system as long as the judge has no actual, personal bias toward the party.

Alabama- A judge who presides over a drug court is disqualified from a case in which one of the parties is a private entity that has contributed \$150,000 to the funding of the drug court.

Colorado- A judge who has reported an attorney's misconduct in a case to the appropriate disciplinary body should disqualify from the case and other cases involving the attorney.

Florida- A judge must disclose a close personal relationship with an attorney in cases involving that attorney's associate if the judge would disclose the relationship if the friend were appearing personally.

New York- A judge running for re-election is not disqualified solely because a party or attorney was present at a fund-raiser on the judge's behalf nor is the judge disqualified by knowledge that an attorney contributed to the judge's campaign, but the judge, in the exercise of discretion, should consider factors such as the size of the contribution in relation to contributions of other attorneys, whether the case was pending before the judge at the time the contribution was made, whether the appearance is during the course of the campaign, whether the attorney's adversary is also listed as a contributor, whether the judge had prior knowledge that the attorney was a supporter and therefore might likely have been thought to be a contributor in any event.

New York- Judges are not disqualified from cases in which an attorney who recently resigned from the same court appears as counsel.

2003

Alabama- A judge is not disqualified from cases in which a party is represented by an attorney who is a law partner of the judge's brother, but the judge should disclose the relationship and consider whether any additional factor might reasonably raise questions about the judge's impartiality or whether the relative has an interest that could be substantially affected by the outcome of the proceeding. If a motion is filed alleging that the judge's brother has an economic interest in the fees resulting from the case, and the judge does not know their financial arrangement, the judge should hold a hearing to determine whether his or her brother does have an interest that could be substantially affected by the outcome of the case.

Nebraska- A judge who is dating an attorney in the public defender's office is not disqualified from all cases involving the office but only from cases in which the specific attorney has appeared as attorney of record or been involved in any manner.

Kentucky- A judge who is represented by the attorney general in a suit in which the judge is sued in his or her official capacity may hear other cases in which the attorney general participates and need not disclose the representation on the record; there is no basis for disqualification when the representation ceases.

Nevada- A judge is not automatically disqualified when the judge's spouse is a consultant as a physician on behalf of one of the parties in the case before the judge even if the spouse will appear as an expert witness, but the judge should disclose the relationship. A judge is not automatically disqualified when the judge's spouse is or has been a consultant as a physician for an attorney in a case pending before another judge.

Alabama- A judge is not disqualified from a civil action in which the defendant is an assistant district attorney assigned to the judge's court.

Virginia- A judge is not disqualified from the cases of attorneys who sub-lease an office building owned by the judge as long as the judge is not involved in managing the property and the lessor's ability to pay the judge what is owed under the terms of the lease is not dependent on the continued financial well-being of the sub-tenant attorneys, but the judge should disclose the facts to the parties.

Florida- A judge whose spouse is a child victim specialist in the state attorney's office is not disqualified from criminal cases in which there are allegations of child sexual abuse if the spouse had no involvement, but should disclose the relationship in all such cases.

West Virginia- A judge who was the prosecuting attorney in a county when a murder occurred and who had discussions with the police is disqualified from a civil habeas corpus proceeding even if the indictment and conviction of the defendant took place after the judge became a judge, and the disqualification cannot be waived.

Florida- A judge is disqualified when the law firm employing the judge's niece as a summer associate appears in a case. Whether a judge is obligated to disclose and disqualify when a law firm appears before the judge that has employed the judge's brother's accounting firm as an expert witness in an unrelated case not pending before the judge depends on the judge's case by case weighing of the facts.

Florida- Whether a judge is disqualified from a case in which an attorney who was a member of a judge's re-election committee appears depends on the extent of the attorney's involvement in the judge's campaign and the remoteness of time since the campaign.

Illinois- A judge is disqualified from a case in which a relative within the third degree is sued in his or her capacity as a government official regardless of whether the relative was involved in or has firsthand knowledge of facts giving rise to the controversy.

2002

Massachusetts- A judge whose child is an assistant district attorney may hear criminal cases in which other attorneys from the same office appear unless the son participates substantially in any stage of the case or assumes an administrative or supervisory role in the office.

Alabama- Subject to remittal, a judge is disqualified from cases in which a party is represented by the judge's brother-in-law.

Alabama- A judge is disqualified from criminal cases prosecuted by the assistant district attorney who is married to the judge's judicial assistant, but not from cases prosecuted by other members of the district attorney's office.

Nevada- A judge is not disqualified from a case involving an attorney who has contributed to the judge's election campaign, publicly endorsed the judge, or agreed to be listed on the judge's campaign committee, but if the contribution is an extraordinary amount or the attorney has served as the judge's campaign

chair, treasurer, or other position, the judge must disclose the participation and afford the parties an opportunity to request recusal.

Alabama- A judge is disqualified from cases in which the defendant is the gynecologist of the judge's wife or the pediatrician of the judge's minor children. The disqualification is not subject to remittal, and the judge may not assign the case to another judge.

Washington- A judge who is a former prosecutor may hear probation violations unless the probation violation involves facts or other matters arising out of a probation in which the judge was personally involved while serving as a prosecutor in either the charging decision or the prosecution of the case to trial or plea.

Alabama- A judge is disqualified from a domestic relations case in which one of the litigants is the sole operator of an investment firm's office where the judge has investments and retirement accounts.

Florida- A judge who jointly owns a parcel of real estate with an attorney is disqualified from cases in which the attorney appears absent remittal.

Kentucky- A judge is disqualified from cases in which one of the attorneys is married to the judge's secretary. A judge whose law clerk is married to a local assistant county attorney is disqualified from cases involving the county attorney's office.

Alabama- A judge who serves on the board of directors of a local bank is disqualified if he or she is named as a defendant in a suit against the bank and should disclose the relationship in any lawsuit against the bank and, if recusal is requested, should examine the particular facts presented to determine if disqualification is necessary.

District of Columbia- Absent remittal following disclosure, a judge whose child has accepted a significant scholarship from a university is disqualified from cases in which a hospital related to the university is a party.

Kentucky- A judge who is represented by the attorney general in a suit in which the judge is sued in his or her official capacity may hear other cases in which the attorney general participates, but should disclose the representation on the record. There is no basis for disqualification when the representation ceases.

Massachusetts- A judge who used to be an adjunct professor at a law school may preside in cases in which a former student appears as assistant prosecutor and need not disclose the relationship.

Massachusetts- A judge whose fiancé is an assistant district attorney is disqualified in any case in which the judge's fiancé worked or had any supervisory responsibility and from all cases from the unit in which the fiancé works. The judge is not disqualified from all cases that arise in the district attorney's office in which the fiancé is employed absent additional facts.

South Carolina- A judge is disqualified from handling bond hearings, warrant requests, and other matters brought by a police officer whom the judge is dating.

2001

Louisiana- A judge who is being represented by a law firm must disclose the relationship whenever the firm appears in a case before the judge regardless of the size of the firm.

Pennsylvania- A judge is disqualified from cases involving the judge's former law firm where the judge and one of the owners jointly own a business that rents office space to the law firm and the judge's spouse is an associate in the firm.

Wisconsin- A judge may hear cases in which attorneys from the law firm in which the judge's niece practices represent litigants, but should consider recusal on a case by case basis.

Florida- A judge who jointly owns a lakeside trailer used for fishing with the elected state attorney and four others is disqualified from all cases involving the state attorney's office.

Illinois- A judge is disqualified from cases pending at the judge's former law firm while the judge practiced there and all cases involving the law firm for three years after the judge left. A judge is disqualified for seven years from all cases involving a client that the judge represented while practicing with the firm even if the judge's representation did not involve the matter now before the court.

Louisiana- A judge must disclose whenever an attorney in a case is employed by a law firm that is representing the judge in a separate matter, regardless of the size of the firm, and consider whether his or her impartiality might reasonably be questioned.

U.S.- A judge who owns a debt interest for a corporation or governmental entity is not disqualified from cases in which the issuer is a party unless the interest

could be substantially affected, measured not by the size of the judge's interest, but by the extent to which that interest could be affected.

Alabama- A judge is not disqualified from cases involving an attorney who rents office space to the judge's son, who is also an attorney, where, although their offices are in the same building, they hold themselves out separately and have separate signs and stationery.

Alabama- A judge whose daughter works as a secretary with the law firm that represents the city is not disqualified from city appeal cases.

South Carolina- A judge may not preside over cases in which the brother of the judge's son-in-law is an attorney unless the parties waive the disqualification following disclosure.

Virginia- A judge is not disqualified from a case in which an acquaintance is a party or a witness if the judge has no business relationship with the person and the relationship is not a close social or personal one.

Alabama- A judge is not disqualified from a case in which the plaintiff allegedly told the defendant that there was no way the defendant would prevail because the plaintiff's attorney is a "good friend" of the judge where the judge and the attorney have no social relationship; have never been to each other's homes; and have never engaged in any recreational activity together, although the judge's 1994 campaign received \$100 each from the plaintiff's attorney, the attorney's firm and another partner in the firm.

Alabama- A judge is not disqualified from a case in which an attorney who was the judge's opponent in a recent campaign represents the parties.

Alabama- A judge may not hear a case in which a close relative of the judge actively assisted trial counsel with case evaluation and preparation even if the relative does not appear in court or personally advise the client.

South Carolina- A judge may hear cases in which the judge's former law partner is involved where the judge has been a judge for four years and last year sold his or her interest in the building in which they practiced.

South Carolina- A judge may not hear cases, including uncontested cases, in which the judge's spouse or members of the spouse's law firm appears.

Florida- A judge is not disqualified from cases in which a party is represented by a law firm that previously represented the law firm of the judge's spouse in a legal malpractice action, but should disclose the previous representation for a reasonable period of time.

2000

Alaska- A judge who receives an *ex parte* communication from a court employee concerning facts affecting a pending case should disclose the employee's identity absent any legal basis for maintaining the court employee's anonymity.

Alabama- A judge is not disqualified from criminal cases when the assistant district attorney who handled the pretrial motion has informed the judge that he or she intends to qualify to run against the judge in an up-coming primary election.

Nevada- A judge is disqualified when a deputy attorney general representing all of the judges of a district in a suit filed by the county clerk appears before the judge as counsel in an unrelated matter.

West Virginia- A judge is disqualified from cases in which the judge's spouse served as mediator.

Delaware- A judge is disqualified from matters involving an associate of the judge's former law firm while the firm owes the judge for the purchase of his or her partnership and where two close relatives of the judge (father and brother) are named partners in the firm. A judge is disqualified from cases involving attorneys from the law firm in which the judge's wife is a principal.

Illinois- A judge is disqualified when the uncle of the judge's spouse is acting as a lawyer in a proceeding. Whether the judge is disqualified when the uncle's law partner (who is also the cousin of the judge's spouse) appears in a case depends upon the nature of the case - in particular, its financial or other impact on the relative's law firm; the relative's position as a partner, shareholder, associate, or of counsel; and the size of the firm.

South Carolina- A judge may preside over cases involving an attorney in whose political campaign the judge actively participated prior to becoming a judge, but should disclose the relationship.

Alabama- A judge is not disqualified from cases in which a party is represented by an attorney whom the judge previously found guilty of criminal contempt in connection with a violation of one of the judge's orders.

Louisiana- A judge is not disqualified from a case in which one of the lawyers provided information to or will be a witness before the Judiciary Commission in a previous or pending disciplinary proceeding in which either the judge or the judge's sibling is a respondent.

New York- A judge is not disqualified from cases where one of the attorneys is the deputy clerk's daughter, but the deputy clerk must be insulated from any contact with the cases.

New York- A judge is not disqualified from cases in which one of the litigants has filed a complaint with the State Commission on Judicial Conduct, commenced a federal civil rights lawsuit against the judge, and filed a criminal complaint against the judge with the district attorney's office.

New York- A judge may preside over matters prosecuted by the office of a district attorney who had been the complainant in a matter that resulted in the judge being admonished by the State Commission on Judicial Conduct over two years earlier. Admonition is the least severe form of public discipline issued by the Commission, the admonition related to a single incident, there is no indication of hostility between the district attorney and judge, and the judge believes he or she can be impartial and there is no indication the district attorney believes otherwise.

New York- A judge must disqualify from proceedings in which the judge's nephew appears as an attorney subject to remittal, but may preside over proceedings in which other lawyers in the nephew's firm appear.

Utah- A judge is disqualified from proceedings in which an attorney who is currently representing the judge before the Judicial Conduct Commission and for six months after the representation has ended.

Virginia- A judge who holds 1% or less of the outstanding stock in a publicly held corporation is not disqualified from cases in which the corporation is a party.

Alabama- A judge whose daughter has filed a wrongful death action against a hospital in her capacity as executrix of her grandmother's estate is disqualified from medical liability cases in which the hospital is a party or in which one of the attorneys in the case represents a party, but not from cases in which other members of the attorney's firm appears. The disqualification cannot be remitted.

Alabama- A judge may hear cases in which parties are represented by the attorney who was the judge's opponent in a recent election or by attorneys who supported the judge's opponent.

New York- A judge is not disqualified from cases in which one of the attorneys had been sued by the judge while serving as district attorney.

New York- A judge is not disqualified because in a prior unrelated action the judge ruled against a party based primarily upon the judge's assessment of the party's credibility.

New York- A judge is not disqualified from a proceeding involving an attorney who had represented the plaintiff in a lawsuit in federal district court against the judge more than 15 years earlier when the judge was an assistant district attorney and the judge feels he/she can be fair and impartial.

New York- A judge whose son is an attorney with the county public defender may not preside over any case in which the son was involved unless there is a remittal of the disqualification, including a waiver by the prosecutor, but the judge need not disclose or recuse in cases in which the defendant is represented by other public defenders.

New York- Subject to remittal, a judge should disqualify from any proceeding involving a law firm that is hiring the judge's son as a lawyer even though the son's employment will not commence for several months.

New York- A judge should disqualify from proceedings involving a law firm that is currently representing the judge's spouse, subject to remittal, and for a two-year period following the conclusion of the representation, the judge should disclose the representation but need not recuse if the judge feels he/she can be fair and impartial.

Florida- A judge may not preside over a case in which a former law partner is an attorney when the attorney's law firm is making payments to the judge pursuant to the terms of a promissory note for the repurchase of all of the judge's stock.

Oklahoma- A judge may lease office space to an attorney who will probably be appearing in the judge's court if the rental is commercially reasonable; the duties of landlord do not interfere with the judicial duties or involve the judge in frequent conferences and transactions with the attorney; the letting is conducted by a realty firm; there is no strained relationship resulting from late rental payments, failure to repair, or other disagreements; the judge does not depend to a significant degree on the rental income; and disqualification will not be frequent. The judge should disclose the relationship if the attorney appears before the judge and should disqualify unless the parties enter a waiver.

