

Judicial Recusal: Required or Ill-Advised?

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Just as a court is required to recuse itself to avoid impropriety, so should a judge remain on a case when a party seeks an unfair advantage by pushing for judicial recusal.

Judicial recusal is governed in New Jersey by case law, the Code of Judicial Conduct and the Rules of Court. A court should ordinarily decide a motion to recuse, which is a discretionary call, itself. *State v. McCabe*, 201 N.J. 34, 45 (2010). The fundamental question is, “Would a reasonable, fully informed person have doubts about the judge’s impartiality?” *Ibid.* Court Rule 1:12-1 delineates the circumstances when a judge must recuse, including if the judge has a familial relationship to a party or lawyer, was an attorney in the action, has a personal interest, has given an opinion, has entered into post-retirement employment discussions with counsel, or for any other reason that might “preclude a fair and unbiased hearing and judgment, or might reasonably lead

counsel or the parties to believe so.” R. 1:12-1(g).

The Code of Judicial Conduct is more expansive and more detailed than the Court Rule. For example, a former law clerk may not appear before that judge for six months. Code of Judicial Conduct, Canon 3.17(B)(4)(f). Specific situations and cases have further developed the circumstances when a judge is required to recuse. A municipal judge may not sit on criminal or quasi-criminal matters generated from the police department where his son is employed. In re Advisory Letter No.7-11 of the Supreme Court Advisory Comm., 213 N.J. 63 (2013). A judge must recuse when a party is represented by a former partner, with whom acrimonious litigation accompanied the break-up of the firm. *Chandok v. Chandok*, 406 N.J. Super. 595 (App. Div. 2009).

Threats from criminal defendants may also result in the need for the judge to recuse, or even all judges in the vicinage. *See State v. Dalal*, 221 N.J. 601 (2015). An ex parte request from a former law clerk resulting in the assignment of the judge to that



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case requires recusal. *Goldfarb v. Solimine*, 460, N.J. Super. 22 (App. Div. 2019), *affirmed as modified on other grounds*, 245 N.J. 326 (2021). A judge’s decision upon its own review to recuse need not state the reason with any specificity. Every recusal motion, however, must be considered on the merits by the judge and reasons given for a decision. If asked by a party about the nature of the relationship with a party or lawyer, the judge must reveal what it is. *P.M. v. N.P.*, 441 N.J. Super 127 (App. Div. 2015). While it might seem that when in doubt, the judge should recuse, in fact our Supreme Court has warned against succumbing to the tactics of a party seeking a new judge for tactical reasons.

Significantly, “[a] judge shall not be automatically disqualified upon learning that a complaint has

been filed against the judge with the Advisory Committee on Judicial Conduct, litigation naming the judge as a party, or any other complaint about the judge by a party.” R. 3.17(E). In *Dalal* our Supreme Court cautioned: “In cases like this one, there is an additional concern: that defendants not be allowed to manipulate the judicial system and engage in forum shopping.” 221 N.J. at 607. The court said: “[W]e believe that when there is any evidence that a defendant has conveyed a threat to prompt the recusal of a judge or somehow manipulate the proceedings, recusal is not required. To assess a defendant’s objective, a judge may consider direct evidence and also draw reasonable inferences from the record.” *Id.* at 608. In light of the recent killing of a federal judge’s son and shooting of her husband, judges’ concern about their welfare and that of their family is certainly understandable, yet parties must not be permitted to manipulate judicial assignments.

Suing a judge, usually in federal court, or filing a judicial conduct complaint also should not result in recusal. If litigants are successful in these court manipulations it will result in an increase in time utilized by the courts, delay of resolution, and litigation cost to the adversary. If successful, other disgruntled litigants will be encouraged to use similar tactics. Judges must stand firm

against this type of unfair manipulation, and opposing counsel should bring these efforts to the attention of the judiciary by opposing recusal. Attorneys should not shrink, however, from moving for recusal of a judge when grounds to support partiality are present. Lawyers have a duty to prevent conflicts of interest from depriving litigants of fair adjudication of their disputes. Impermissible conflicts include personal interests. See RPC 1.7(a). A judge who has a prohibited relationship with parties, counsel or key witnesses that a reasonable person would view as undercutting impartiality should recuse. Refusal to step away can result in public discipline. See *In re Steven P. Perskie*, 207 N.J. 275 (2011).

Like disqualification motions, recusal motions require crisp, articulable bases in order to avoid appearing to manipulate proceedings for purely strategic reasons. The RPCs forbid bringing motions without a non-frivolous basis in law and fact (RPC 3.1); require expediting litigation (RPC 3.2); and prohibit conduct prejudicial to the administration of justice (RPC 8.4(d)). Those cautionary rules discourage unfounded motions to recuse.

However, especially when the grounds for recusal are objectively established, like familial connections to a party, attorney or key witness, or like a personal or economic interest,



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counsel should move forward to protect both the fair administration of justice and the appearance of fairness. *Magill v. Casel*, 238 N.J. Super. 57, 63 (App. Div. 1990). Failure to seek recusal at the outset, despite the presence of sound grounds, can lead to waste of judicial resources. *Chandok*, 406 N.J. Super. at 605.

Neither judges nor lawyers should shrink from their respective duties when analyzing the bona fides, facts and applicable standards for judicial recusal. Motions to recuse, judicial determinations to recuse and refusals to recuse all rest on applying the pertinent facts of the situation to the guiding principles contained in the RPCs, Judicial Code, court rules and other authorities.

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