

CANON 3E | DISQUALIFICATION

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer or was the lower court judge in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

(c) the judge knows that he or she individually or as a fiduciary, or the judge's spouse, parent, or child wherever residing, 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 or has any other more than de minimis interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

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

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

(iii) is known by the judge to have a more than de minimus interest that could be substantially affected by the proceeding;

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

(e) the judge's spouse or a person within the third degree of relationship to the judge participated as a lower court judge in a decision to be reviewed by the judge;

(f) the judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit the judge with respect to:



- (i) parties or classes of parties in the proceeding;
- (ii) an issue in the proceeding; or
- (iii) the controversy in the proceeding.

(2) A judge should keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the economic interests of the judge's spouse and minor children residing in the judge's household.

([Amended Jan. 23, 2003 (838 So. 2d 521); Jan. 5, 2006 (918 So. 2d 949).])

Commentary

Canon 3E(1). Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification. The fact that the judge conveys this information does not automatically require the judge to be disqualified upon a request by either party, but the issue should be resolved on a case-by-case basis. Similarly, if a lawyer or party has previously filed a complaint against the judge with the Judicial Qualifications Commission, that fact does not automatically require disqualification of the judge. Such disqualification should be on a case-by-case basis.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

Canon 3E(1)(b). A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.



Canon 3E(1)(d). The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that “the judge’s impartiality might reasonably be questioned” under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be “substantially affected by the outcome of the proceeding” under Section 3E(1)(d)(iii) may require the judge’s disqualification.

Canon 3E(1)(e). It is not uncommon for a judge’s spouse or a person within the third degree of relationship to a judge to also serve as a judge in either the trial or appellate courts. However, where a judge exercises appellate authority over another judge, and that other judge is either a spouse or a relationship within the third degree, then this Code requires disqualification of the judge that is exercising appellate authority. This Code, under these circumstances, precludes the appellate judge from participating in the review of the spouse’s or relation’s case.

[Commentary amended June 15, 1995 (656 So. 2d 926); Aug. 24, 1995 (659 So. 2d 692); Nov. 9, 1995 (662 So. 2d 930); Jan. 23, 2003; (838 So. 2d 521); Jan. 5, 2006 (918 So. 2d 949).

