

Judicial Ethics Committee Advisory Opinion 22-02

August 17, 2022

QUESTIONS:

The Judicial Ethics Committee has been asked for an opinion concerning two issues: 1) whether a judge is required to automatically disqualify himself or herself when, in a contested matter, one or both of the litigants is a licensed attorney and 2) whether a judge is required to recuse himself or herself when one of the attorneys involved in matter is a member of the judge's former law firm.

ANSWERS:

1) No. A trial judge should not recuse himself or herself simply because one of the parties involved in a contested matter before the court is a licensed attorney.

2) No. The Code of Judicial Conduct ("the Code") speaks both directly and indirectly to this question. However, other than narrow and specific circumstances, *see* RJC 2.11(A)(6), the Code does not require recusal simply because an attorney is a member of the judge's former law firm.

DISCUSSION


1) This Committee previously opined on the question of whether a judge is required to recuse himself or herself based solely on the fact that one of the litigants involved in a contested matter is a licensed attorney. *See* Judicial Ethics Opinion No. 91-5. At the time, this Committee concluded that "a judge should hear and decide matters assigned to the judge except those in which disqualification is required [by the Code or the law] or which present a situation where the court's impartiality might reasonably be questioned. Courts should not grant automatic or blanket disqualifications, but instead should consider motions for disqualification on a case-by-case basis." We concur with the prior opinion of this Committee and only issue a new opinion because the numbering of the Rules within the Code has changed since the prior opinion was issued.

As noted in this Committee's prior opinion, a judge is required to hear and decide matters assigned to the judge promptly "except when disqualification is required by RJC 2.11 or other law." RJC 2.5 and 2.7. Though RJC 2.11 lists several situations in which recusal is or may be required, the fact that one of the litigants is a licensed attorney is not included in that list. Therefore, as this Committee previously opined, judges should not grant automatic or blanket disqualifications simply because a litigant, in a contested matter, is a licensed attorney. Rather, judges should review the matters in conjunction with the Code and consider them on a case-by-case basis.

2) While there are no rules requiring recusal based solely on the judge's prior association with a lawyer or law firm, the Code does address one specific situation in which a judge's prior association with a firm or lawyer mandates recusal. Pursuant to RJC 2.11(A)(6), a judge shall disqualify himself if the judge "served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association." A plain reading of the foregoing rule precludes a judge from hearing a matter in which the judge was a lawyer in the matter or was associated with a lawyer or law firm that was "substantially" engaged in the matter while the judge was associated with the law firm or the lawyer. However, the rule does not require recusal if the lawyer or law firm was not engaged in the matter while associated with the judge. In short, the rule requires recusal if the judge, while associated with a lawyer or law firm, can be said to have obtained actual or inferred knowledge of the matter before him.

Apart from the specific circumstance cited above, the Code does not require recusal simply because a judge was associated with the lawyer appearing before the court. The Committee would note, however, that despite the lack of additional rules directly addressing the relationship between a judge and his prior association with a lawyer or law firm, these situations should be reviewed through the lens of the Code and its purposes and principles. For example, the preamble of the Code states that judges should "avoid both impropriety and the appearance of impropriety" and ensure the public's confidence "in their independence, impartiality, integrity, and competence." Code of Judicial Conduct, *Preamble*. Moreover, Rule 2.2 requires judges to "perform all duties of judicial office fairly and impartially." Rule 2.4 warns judges not to allow "relationships to influence the judge's conduct or judgment." And, finally, Rule 2.11(A) states that "a judge shall disqualify himself or herself in any proceeding in which he judge's impartiality might reasonably be questioned." Again, these rules do not require a judge to recuse himself or herself simply because the judge has a prior association with the lawyer or the law firm litigating a matter before the court; yet, judges should consider them when evaluating these situations.

FOR THE COMMITTEE:



J. ROSS DYER, JUDGE

CONCUR:

Judge Angelita Blackshear Dalton
Judge Tammy Harrington
Judge Deana Hood

Judge Timothy E. Irwin
Judge Betty Thomas Moore
Judge Jerry Stokes