
From: Begemann, Jill
Sent: Tuesday, February 22, 2022 11:41 AM
To: andrew.mcdonald
Cc: D'Auria, Gregory; Prescott, Eliot; Paul Hartan(Connapp); Del Ciampo, Joseph; Black, Courtney
Subject: Proposed rules regarding judicial disqualification
Attachments: FINAL Proposal re Rule 2.11 Code of Jud. Conduct.docx; FINAL Proposal re NEW 66-9 Disqualification.docx

Good afternoon Justice McDonald,

I am writing to you, at the request of Justice D'Auria and Judge Prescott, regarding proposed amendments to the Rules of Appellate Procedure and the Code of Judicial Conduct regarding judicial disqualification.

By way of explanation, section 1-22 of the Superior Court rules pertains to disqualification of a judicial authority. Subsection (b) of that rule provides: "A judicial authority is not automatically disqualified from sitting on a proceeding merely because an attorney or party to the proceeding has filed a lawsuit against the judicial authority or filed a complaint against the judicial authority with the Judicial Review Council or an administrative agency. When such an attorney or party appears before the judicial authority, he or she shall so advise the judicial authority and the other attorneys and parties to the proceeding on the record, and, thereafter, the judicial authority shall either disqualify himself or herself from sitting on the proceeding, conduct a hearing on the disqualification issue before deciding whether to disqualify himself or herself or refer the disqualification issue to another judicial authority for a hearing and decision."

The Advisory Committee on Appellate Rules is considering whether to add a new appellate rule, section 66-9, regarding disqualification of appellate jurists. The proposed new rule is attached to this email. The new rule similarly provides that a justice of the Supreme Court or a judge of the Appellate Court is not automatically disqualified from acting in a matter merely because an attorney or party to the matter has filed a lawsuit against the justice or judge or filed a complaint against the justice or judge with the Judicial Review Council or an administrative agency. The new rule provides, in subsection (c), that "[w]hen an attorney or party who has filed a lawsuit or a complaint against a justice or judge is involved in a matter before the court on which the justice or judge sits, such attorney or party shall so advise the court and other attorneys and parties to the matter, and, thereafter, the justice or judge who is the subject of the disqualification issue shall either decide whether to disqualify himself or herself from acting in the matter or refer the disqualification issue to another justice or judge of the court for a decision."

The intent behind the language in subsection (c) is to leave it up to the justice or judge who is the subject of the disqualification issue to disqualify himself or herself or refer it to another justice or judge to decide the issue without the necessity of conducting a hearing as required by section 1-22.

The new rule also provides, in subsection (b), that "[a] justice of the Supreme Court or a judge of the Appellate Court is not automatically disqualified from acting in a matter merely because . . . the justice or judge previously practiced law with the law firm or attorney who filed an amicus brief in the matter or the justice's or judge's spouse, domestic partner, parent, or child, or any other member of the justice's or judge's family residing in his or her household is practicing or has practiced law with such law firm or attorney." Please note that the language in subsection (b) of the proposed rule is taken from the current text of Comment 7 to Rule 2.11 of the Code of Judicial Conduct, which was adopted in 2010 and applies only to the judges and justices of the Appellate and Supreme Courts. The language was not substantively changed; it was just moved to the new rule.

The advisory committee would also like to propose the attached amendment to the Rule 2.11 of the Code of Judicial Conduct. Pursuant to this amendment, when the judge becomes aware that a lawsuit or complaint has been filed against him or her, the judge shall proceed in accordance with Practice Book Section 1-22 (b) or 66-9. As indicated above, these rules require that the attorney or party who has filed a lawsuit or a complaint against a judicial authority advise the court and other attorneys and parties to the matter. The proposed amendment to Rule 2.11 of the Code of Judicial Conduct, therefore, deletes the requirement that the judge, on the record, disclose the fact that a lawsuit or complaint has been filed against him or her, since the burden of disclosure is on the party or attorney filing the lawsuit or complaint. This amendment is also consistent with the practice of the Supreme Court and Appellate Court, which do not typically hear disqualification issues "on the record."

The proposed new section 66-9 will be on the April 7 advisory committee agenda for a vote. It is my understanding that the proposed amendment to the Code of Judicial Conduct will need to be presented to the Rules Committee of the Superior Court for a vote. With that in mind, I wanted to bring this to your attention with a request that the proposed amendment to Rule 2.11 of the Code of Judicial Conduct be given to the Rules Committee of the Superior Court for consideration and vote at the spring meeting. The goal is for both the amendment to the Code of Judicial Conduct and new appellate rule 66.9 to be approved and published in the 2023 Practice Book with an effective date of January 1, 2023.

Please let me know if you need any more information from me regarding the above. Thank you very much.

Jill

Jill B. Begemann
Director of Appellate Operations
75 Elm Street
Hartford, CT 06106
(860) 713-2194

Code of Judicial Conduct, Rule 2.11. Disqualification

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

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(A) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(B) acting as a lawyer in the proceeding;

(C) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(D) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, 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.

(4) The judge has made a public statement, other than in a court proceeding, judicial decision, or opinion that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(A) 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;

(B) served in governmental employment and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy; or

(C) was a material witness concerning the matter.

(b) A judge shall keep informed about the judge's personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(c) A judge subject to disqualification under this Rule, other than for bias or prejudice under subsection (a)(1), may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification, provided that the judge shall disclose on the record the basis of such disqualification. If, following the disclosure, the parties and lawyers agree, either in writing or on the record before another judge, that the judge should not be disqualified, the judge may participate in the proceeding.

(d) Notwithstanding the foregoing, a judge may contribute to a client security fund maintained under the auspices of the court, and such contribution will not require that the judge disqualify himself or herself from service on such a client security fund committee or from participation in a lawyer disciplinary proceeding or in any matter concerning restitution or subrogation relating to such a client security fund.

(e) A judge is not automatically disqualified from sitting on a proceeding merely because a lawyer or party to the proceeding has filed a lawsuit against the judge or filed a complaint against the judge with the Judicial Review Council or an administrative agency. When the judge becomes aware pursuant to Practice Book Sections 1-22(b), ~~or 4-8, 66-9 or~~ otherwise that such a lawsuit or complaint has been filed against him or her, the judge shall, ~~on the record, disclose that fact to the lawyers and parties to the proceeding before such judge, and the judge shall thereafter~~ proceed in accordance with Practice Book Section 1-22(b) or 66-9.

(f) The fact that the judge was represented or defended by the attorney general in a lawsuit that arises out of the judge's judicial duties shall not be the sole basis for recusal by the judge in lawsuits where the attorney general appears.