

EXHIBIT 1  
DATE 1/17/07  
HB 229

46 Am Jur Judges

## JUDGES

ship between the trial judge and counsel, and the amount of time that has elapsed after termination of the cocounsel relationship.<sup>4</sup>

The mere association of a judge's former law clerk with a firm which appears before a judge does not by itself lead to a proceeding in which a judge's impartiality might reasonably be questioned.<sup>5</sup> However, the rules and statutes of some jurisdictions prohibit a judge's former law clerk from practicing for a specified period before the judge.<sup>6</sup>

### § 143 Acquaintance or relationship with counsel— Contributions or participation by attorney to judge's campaign

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#### Research References

West's Key Number Digest, Judges ⇨45, 46, 49(1), 49(2)

A contribution not exceeding the legal limit for campaign contributions made by counsel to the campaign of a trial judge before whom counsel appears is a legally insufficient ground to justify recusal,<sup>1</sup> and a judge's acceptance of campaign contributions from lawyers does not create bias or even an appearance of impropriety necessitating recusal.<sup>2</sup> The fact that an attorney worked on a judge's campaign prior to the filing of a lawsuit does not disqualify the judge on the basis of an appearance of impropriety,<sup>3</sup> absent proof of bias or prejudice.<sup>4</sup>

While in many cases a lawyer's role in a judicial campaign would clearly not raise any question as to the appearance of fairness, there can be such a relationship between a judge and a lawyer which requires disqualification. Thus, as to the situation of whether participation of a prosecuting attorney as a cochair of a judge's campaign would cause a judge's impartiality to be reasonably questioned in the appeal of a criminal case, the critical concern is determining whether the proceeding satisfies the appearance of fairness and how it would appear to a reasonably prudent and disinterested person.

<sup>4</sup>Bonelli v. Bonelli, 214 Conn. 14, 570 A.2d 189, 85 A.L.R.4th 691 (1990).

As to disqualification of a judge for acting as an attorney in a case, see §§ 157 to 167.

<sup>5</sup>Marxe v. Marxe, 238 N.J. Super. 490, 570 A.2d 44 (Ch. Div. 1989).

<sup>6</sup>Reilly by Reilly v. Southeastern Pennsylvania Transp. Authority, 330 Pa. Super. 420, 479 A.2d 973 (1984).

#### [Section 143]

<sup>1</sup>Keane v. Andrews, 555 So. 2d 940

(Fla. Dist. Ct. App. 4th Dist. 1990); Jackson v. Jackson, 732 So. 2d 916 (Miss. 1999).

<sup>2</sup>Aguilar v. Anderson, 855 S.W.2d 799 (Tex. App. El Paso 1993), writ denied, (Sept. 29, 1993).

<sup>3</sup>Massongill v. County of Scott, 337 Ark. 281, 991 S.W.2d 105 (1999); Gluth Bros. Const., Inc. v. Union Nat. Bank, 192 Ill. App. 3d 649, 139 Ill. Dec. 650, 548 N.E.2d 1364 (2d Dist. 1989).

<sup>4</sup>Massongill v. County of Scott, 337 Ark. 281, 991 S.W.2d 105 (1999).

The answer necessarily depends on such considerations as specific roles of the prosecuting attorney in the case at hand, the size of the county involved, or the presence of unusual circumstances such as extensive publicity surrounding the case at hand or controversy over the prosecutor's handling of certain cases.<sup>5</sup>

### § 144 Judge's past background and experiences

#### Research References

West's Key Number Digest, Judges ⇨49(1), 49(2)

While litigants are entitled to a judge who will hear both sides and decide an issue on the merits of the law and the evidence presented, they are not entitled to a judge whose mind is a clean slate. Each judge brings to the bench the experiences of life, both personal and professional. A lifetime of experience that has generated a number of general attitudes cannot be left in chambers when a judge takes the bench.<sup>1</sup> The fact that a trial judge harbors political views, religious persuasion, or values that are in direct opposition to those of a defendant does not, standing alone, constitute a basis for recusal.<sup>2</sup>

### § 145 Representation of judge by counsel for one of the parties

#### Research References

West's Key Number Digest, Judges ⇨45, 46, 49(1), 49(2)

There is authority that a judge is disqualified to sit in a case where the judge is or has been represented in unrelated matters by counsel for one of the defendants.<sup>1</sup> However, the appearance of bias arising from past representation will ordinarily be much less disturbing than the appearance arising from concurrent representation because it is more likely to appear to a reasonable person that a judge's conduct of the trial may not be impartial when one of the attorneys is, even as the trial is being held, representing the judge.<sup>2</sup>

Where past representation of a trial judge by an attorney for one of the parties is not personal to the judge but rather involves representing the judge as part of a class action seeking increased compensation

<sup>5</sup>State v. Carlson, 66 Wash. App. 909, 833 P.2d 463 (Div. 1 1992).

#### [Section 144]

<sup>1</sup>Madsen v. Prudential Federal Sav. and Loan Ass'n, 767 P.2d 538 (Utah 1988).

<sup>2</sup>Welsh v. Com., 14 Va. App. 300, 416 S.E.2d 451 (1992), judgment aff'd,

246 Va. 337, 437 S.E.2d 914 (1993).  
[Section 145]

<sup>1</sup>In re Disqualification of Badger, 47 Ohio St. 3d 604, 546 N.E.2d 929 (1989).

<sup>2</sup>Reilly by Reilly v. Southeastern Pennsylvania Transp. Authority, 330 Pa. Super. 420, 479 A.2d 973 (1984).

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**Research References**

West's Key Number Digest, Judges ⇨39, 50, 51(1)  
 Am. Jur. Pleading and Practice Forms, Certificates by judge disqualifying himself or herself. Judges §§ 9, 44; Consent—Of judge—To transfer cause to another judge. Judges § 46; Order—Designating pro tem judge—On voluntary disqualification of regular judge—Stipulation by parties to trial judge. Judges § 55; Order—Designating pro tem judge—On request of disqualified judge—Temporary transfer from other judicial circuit. Judges § 56

A judge has a duty to self disqualify himself or herself as soon as he or she is aware that legal grounds therefor exist.<sup>1</sup> The prejudice must be such that the defendant cannot receive a trial uninfluenced by the court's prejudgment,<sup>2</sup> a decision left to the court's reasonable discretion.<sup>3</sup> The judge need not state the reasons for the recusal.<sup>4</sup>

A judge may self disqualify where he or she harbors actual prejudice in the case<sup>5</sup> or has been personally attacked;<sup>6</sup> whenever the judge's conduct is not above reproach;<sup>7</sup> or where disciplinary charges related to the case have been filed against the judge.<sup>8</sup>

Under the Code of Judicial Conduct, a judge shall disqualify himself or herself where:<sup>9</sup>

- (1) the judge's impartiality might reasonably be questioned, such as where the judge has a personal bias against an attorney or a party or has a personal interest in the matter;
- (2) where the judge served as a lawyer or was a material witness regarding the matter;
- (3) where a relationship of the judge is a party, attorney, or material witness or has a material interest in the matter; or
- (4) where the judge knows that a party or attorney made significant contributions to the judge's campaign.

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Even when the canons do not require recusal, a judge may recuse

**[Section 169]**

<sup>1</sup>Pope v. State, 257 Ga. 32, 354 S.E.2d 429 (1987).

As to judge's responsibility to disclose any potential conflict, see § 80.

As to self recusal in federal court, see Am. Jur. 2d, Federal Courts § 47.

<sup>2</sup>Vautrot v. West, 272 Ga. App. 715, 613 S.E.2d 19 (2005).

<sup>3</sup>In re Marriage of Goellner, 770 P.2d 1387 (Colo. Ct. App. 1989).

<sup>4</sup>State ex rel. Mosshammer v. Allen

Superior Court No. 3, 246 Ind. 366, 206 N.E.2d 139 (1965).

<sup>5</sup>Flowers v. State, 738 N.E.2d 1051 (Ind. 2000).

<sup>6</sup>Cooke v. U.S., 267 U.S. 517, 45 S. Ct. 390, 69 L. Ed. 767 (1925).

<sup>7</sup>In Interest of Morrow, 400 Pa. Super. 339, 583 A.2d 816 (1990).

<sup>8</sup>State v. Hunt, 147 Vt. 631, 527 A.2d 223 (1987).

<sup>9</sup>Code of Judicial Conduct Canon 3E.