

Recusal and the Rule of Necessity

When must a judge disqualify himself?

All judges in Pennsylvania should, under the Code of Judicial Conduct, disqualify themselves in a case in which their “impartiality might reasonably be questioned.” Canon 3(C) of the Code lists several instances when a judge may be prompted to “recuse” or withdraw from hearing a case to comply with this rule. If, for example, a judge has a substantial financial interest in a case or is closely related to one of the parties in a case, then he or she should consider, for ethical reasons and to avoid a conflict of interest, stepping aside.

But a judge cannot always disqualify himself/herself, even when the judge has a personal interest in a case. A legal principle known as “the rule of necessity” may require the judge to hear a case and make a decision.

Under the rule of necessity, it is more important for a judge to decide a case—even when burdened with a conflict of interest—than to leave litigating parties in limbo by failing to render a decision. Judges in that situation must set aside all personal interest and rule with complete neutrality. The rule of necessity is applied in federal courts as well as Pennsylvania courts.

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