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.

Revised November 2012