

Del Ciampo, Joseph

4-3

From: Libbin, Martin
Sent: Monday, December 11, 2017 1:14 PM
To: Del Ciampo, Joseph
Subject: FW: Proposed Purpose of Amendments
Attachments: Code of Judicial Conduct Rule 2.11 - Disqualification.rev 12-11-17.docx; Practice Book Section 1-22 Disqualification of Judicial Authority.rev 12-11-17.docx; Practice Book Sec 4-8.Affidavit re Complaint or Lawsuit.Rev 12-11-17.docx

Dear Joe:

Attached are revised proposed amendments to the Code of Judicial Conduct and Practice Book, as well as a new proposed Practice Book section concerning disqualification of judicial officials which I am submitting on behalf of Judge Patrick L. Carroll III, Chief Court Administrator. The purpose of the amendments and new section is to place an affirmative obligation on the parties and attorneys who have filed a complaint with the Judicial Review Council, an administrative agency such as the Commission on Human Rights and Opportunities or the Equal Employment Opportunity Commission, or a lawsuit against a judge to give notice of those filings so that Judicial Officials are alerted and can then proceed in accordance with the requirements of Practice Book section 1-22 to either recuse themselves or to hold a hearing or refer the matter to another Judicial Official to hold a hearing on the disqualification issue. In light of concerns about possible retaliation for a person having filed a complaint or lawsuit against a judicial official, I have amended proposed section 4-8 to specify that the name of the judicial official not be included in the disclosure. When a disclosure is filed, all judicial officials who subsequently take action with respect to that file will have to check their own records to see if the person filing the disclosure has ever filed a complaint or lawsuit against the Judicial Official.

We would appreciate these revised amendments being considered at the next meeting of the Rules Committee.

If you or Justice Robinson have any questions, please feel free to contact me.

Martin R. Libbin
Director, Legal Services
Connecticut Judicial Branch
100 Washington Street
3rd Floor
Hartford, CT 06106
Tel: (860) 706-5120
Fax: (860) 566-3449
Email: Martin.Libbin@jud.ct.gov

This e-mail and any attachments/links transmitted with it are for the sole use of the intended recipient(s) and may be protected by the attorney/client privilege, work product doctrine, or other confidentiality provision. If you are not the intended recipient, you are hereby notified that any review, disclosure, copying, dissemination, distribution, use or action taken in reliance on the contents of this communication is STRICTLY PROHIBITED. Please notify the sender immediately by e-mail if you have received this in error and delete this e-mail and any attachments/links from your system. Any inadvertent receipt or transmission shall not be a waiver of any privilege or work product protection. The Connecticut Judicial Branch does not accept liability for any errors or omissions in the contents of this communication which arise as a result of e-mail transmission, or for any viruses that may be contained therein. If verification of the contents of this e-mail is required, please request a hard-copy version.

From: Libbin, Martin
Sent: Friday, March 17, 2017 2:50 PM
To: Joseph Del Ciampo <Joseph.DelCiampo@jud.ct.gov>
Subject: Proposed Purpose of Amendments

Dear Joe:

Attached are proposed amendments to the Code of Judicial Conduct and amendments and an addition to the Practice Book concerning disqualification of judicial officials which I am submitting on behalf of Judge Patrick L. Carroll III, Chief Court Administrator. The purpose of the amendments and new section is to place an affirmative obligation on the parties and attorneys who have filed a complaint with the Judicial Review Council or a lawsuit against a judge to give notice of those filings so that Judicial Officials are alerted and can then proceed in accordance with the requirements of Practice Book section 1-22 to either recuse themselves or to hold a hearing or refer the matter to another Judicial Official to hold a hearing on the disqualification issue.

We would appreciate these amendments being considered at the March meeting of the Rules Committee.

If you or Justice Eveleigh have any questions, please feel free to contact me.

Martin R. Libbin
Director, Legal Services
Connecticut Judicial Branch
100 Washington Street
3rd Floor
Hartford, CT 06106
Tel: (860) 706-5120
Fax: (860) 566-3449
Email: Martin.Libbin@jud.ct.gov

This e-mail and any attachments/links transmitted with it are for the sole use of the intended recipient(s) and may be protected by the attorney/client privilege, work product doctrine, or other confidentiality provision. If you are not the intended recipient, you are hereby notified that any review, disclosure, copying, dissemination, distribution, use or action taken in reliance on the contents of this communication is STRICTLY PROHIBITED. Please notify the sender immediately by e-mail if you have received this in error and delete this e-mail and any attachments/links from your system. Any inadvertent receipt or transmission shall not be a waiver of any privilege or work product protection. The Connecticut Judicial Branch does not accept liability for any errors or omissions in the contents of this communication which arise as a result of e-mail transmission, or for any viruses that may be contained therein. If verification of the contents of this e-mail is required, please request a hard-copy version.

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 such a lawyer or party [the

~~judge becomes aware that such a lawsuit or complaint has been filed against him or her, the judge~~] appears before the judge, he or she shall, on the record, disclose that fact to the [lawyers] judge and other [and] parties to the proceeding before such judge and the judge shall thereafter proceed in accordance with Practice Book Section 1-22 (b).

(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.

(Effective Jan. 1, 2011.)

COMMENT: (1) Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of

subsections (a) (1) through (5) apply. In many jurisdictions, the term “recusal” is used interchangeably with the term “disqualification.”

(2) A judge’s obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

(3) The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

(4) The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge’s impartiality might reasonably be questioned under subsection (a) or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under subsection (a) (2) (C), the judge’s disqualification is required.

(5) The Rule does not prevent a judge from relying on personal knowledge of historical or procedural facts acquired as a result of presiding over the proceeding itself.

(6) Subsection (d) is intended to make clear that the restrictions imposed by *Dacey v. Connecticut Bar Assn.*, 184 Conn. 21, 441 A.2d 49 (1981), or any implications therefrom should not be considered to apply to judges contributing to a client security fund under the auspices of the court.

AMENDMENT NOTE: Comment (7) to Rule 2.11 was adopted by the judges of the appellate court on July 15, 2010, and the justices of the supreme court on July 1, 2010. It was not, however, adopted by the judges of the superior court.

(7) A justice of the supreme court or a judge of the appellate court is not disqualified from sitting on a proceeding merely because he or she 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.

Sec. 1-22. Disqualification of Judicial Authority

(a) A judicial authority shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if such judicial authority is disqualified from acting therein pursuant to Rule 2.11 of the Code of Judicial Conduct or because the judicial authority previously tried the same matter and a new trial was granted therein or because the judgment was reversed on appeal. A judicial authority may not preside at the hearing of any motion attacking the validity or sufficiency of any warrant the judicial authority issued nor may the judicial authority sit in appellate review of a judgment or order originally rendered by such authority.

(b) 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 ~~[the judicial authority has been made aware of the filing of such lawsuit or complaint,]~~ appears before the judicial authority, he or she shall so advise the judge and 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.

Practice Book Sec. 4-8 (New)

When an appearance is filed by or on behalf of a party, and either the party or attorney has filed a complaint with the judicial review council or an administrative agency or filed a lawsuit against any judicial official other than a small claims magistrate, and the complaint or lawsuit remains pending or was disposed of within five years of the appearance, the appearance shall be accompanied by an affidavit on a form prescribed by the office of the chief court administrator, affirmatively stating that such a complaint or lawsuit was filed. If a party or attorney files such a complaint or lawsuit during the pendency of any matter, within two business days he or she shall file an affidavit on a form prescribed by the office of the chief court administrator in each pending matter in which he or she is a party or has appeared affirmatively stating that he or she has filed such a complaint or lawsuit. Any such form shall not include the name of the individual complained against.