

Opinions from the Advisory Committee on Judicial Ethics

The advisory Committee on Judicial Ethics (www.nycourts.gov/ip/acje) responds to written inquiries from New York State's full- and part-time judges, candidates for elective judicial office, and quasi-judicial officials such as support magistrates, court attorney-referees, and judicial hearing officers. The committee's opinions interpret the rules Governing Judicial Conduct (22 NYCRR Part 100), the Code of Judicial Conduct and Part 36 of the rules of the Chief Judge (22 NYCRR Part 36). Justice George D. Marlow chairs the committee of 26 judges, and Maryrita Dobiela, Esq. is its Chief Counsel.

Opinion 07-158

October 18, 2007

Digest: A part-time judge, who also is a law school professor who selects local attorneys to assist with teaching a trial advocacy course, should disclose that relationship when any such attorney appears in the judge's court. Disqualification upon objection is discretionary, except when a party is self-represented. The judge need not disclose the relationship when any such attorney's partners or associated attorneys appear, but only when the attorney who actually assists in teaching the class appears.

Rules: Judiciary Law §14; *People v. Moreno*, 70 ny2d 403 [1987]; 22 NYCRR 100.2(B), (C); 100.3(E)(1); 100.3 (F); opinions 07-99; 07-73; 07-35; 07-10; 05-152; Joint opinion 05-89/95; 00-119 (Vol. XIX); 88-153 (Vol. III).

Opinion:

A part-time judge, who also is a law school professor, supervises a trial advocacy course each spring at a law school. The judge selects six to eight attorneys from the local bar as adjunct faculty to work under his/her direction and supervision as instructors for the trial advocacy course. In the past, the judge has chosen a confidential law clerk, private attorneys who practice civil and/or criminal law and an assistant district attorney to serve as instructors for the course and this year anticipates hiring the County District attorney. The law school, not the judge, determines the adjunct faculty's salary.

In the past, when an adjunct faculty member appeared as an attorney in the judge's court, the judge disclosed his/her relationship with the attorney to all the parties and asked if anyone "was uncomfortable with [the judge] presiding in the case." The judge indicates that he/she "would continue that practice and would recuse [him]self if [he/she] had any concern about [his/her] impartiality or the appearance of such."

The judge asks whether selecting any particular category of attorney as an adjunct faculty member to assist with the trial advocacy course would create an "impermissible conflict" despite the disclosure procedure he/she follows.

Pursuant to the rules Governing Judicial Conduct, a judge must disqualify him/herself in a proceeding where the judge's impartiality might reasonably be questioned (see 22 NYCRR 100.3[E][1]). In addition, a judge shall not allow family, social, political or other relationships to influence the judge's conduct or judgment, nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge (see 22 NYCRR 100.2[B], [C]); opinion 07-73). Here, however, the mere fact that the inquiring judge teaches a single course with the assistance of various different attorneys during each semester the course is taught does not, in and of itself, give rise to a reasonable appearance of impropriety that would mandate disqualification.

Therefore, when a private attorney, or the Public Defender (or assistant public defender), or the District attorney (or assistant district attorney) is actually assisting the inquiring judge in the law school course at the same time any such attorney him/her-self appears before the judge, the judge should disclose these facts fully and on the record. In the event either party or attorney objects, the decision to disqualify him/herself and exercise recusal is left to the judge's sound discretion after considering all the circumstances, including, but not limited to: 1) whether the attorney assists the judge during successive semesters; 2) the nature of the attorney's case before the judge; and 3) the relationship between the judge and such attorney beyond the teaching environment (if any). If, after considering all relevant factors, the judge determines that there is no reasonable appearance of impropriety and the judge is confident he/she will remain fair and impartial, the judge is not disqualified and may preside. (see *People v Moreno*, 70 N.Y.2d 403 [1987]; opinions 07-35; 07-10; 00-119 [Vol. XIX]).

Finally, in the event such assisting attorney's partners or associated attorneys appear before the judge, no disclosure is required.