

**JUDICIAL ETHICS COMMITTEE
OF THE
ADVISORY COMMITTEE ON THE CODE OF JUDICIAL CONDUCT**

Question 1: Is recusal mandatory, in any pending action, when a party, acting pro se, has filed a suit (or something that purports to be a suit) against the judge or has filed a complaint with the Committee on Judicial Responsibility and Disability?

Answer: The present Code of Judicial Conduct requires that a judge disqualify him or herself "in any proceeding in which he has reason to believe that he could not act with complete impartiality or in a proceeding in which his impartiality might reasonably be questioned." Canon 3(C). Therefore, if the judge believes that the pro se suit against the judge has no bearing upon that judge's ability to act impartially, the judge need not recuse him or herself unless the judge's impartiality might reasonably be questioned. It would seem that if the pro se suit or complaint against the judge was so spurious or meritless on its face that anyone could immediately see that the suit or complaint was ridiculous, then it would seem that the judge's impartiality could not be questioned. Also, if it is so obvious from the face of the suit or complaint that the party is filing it solely for the purpose of removing the judge from the primary case, then it would not seem that the judge's impartiality could be questioned. Furthermore, if it can be reasonably anticipated that the party would bring the same type of suit against the next judge if the present judge recuses him or herself, then recusal is not required.

In the committee draft of the proposed 1991 Maine Code of Judicial Conduct these same two bases of disqualification are carried forward. § 3(E). However, the section on disqualification for the reason that the judge's impartiality might reasonably be questioned contains specific instances in which the disqualification would be appropriate. These include situations in which the judge has an actual bias or personal knowledge of the disputed facts (§ 3(E)(2)(a)); in which the judge has been a material witness or was associated with a lawyer in the case concerning the matter (§ 3(E)(2)(b)); in which the judge or the judge's family has an economic interest which is more than de minimus (§ 3(E)(2)(c)); or in which a relative of the judge is a party, lawyer, witness, or has an economic interest (§ 3(E)(2)(d)). None of these instances answers the present question, but they serve to illustrate the types of situations in which the judge's impartiality might be called into question. It does not appear that the judge's impartiality could be reasonably questioned unless the pro se suit contains allegations that would fit under one of these subsections, such as alleging that one of the parties in the primary suit is a relative of the judge.

Section 3(E) of the proposed Code also allows a judge to refuse disqualification even if it might otherwise be required if no other judge or court is available or if the disqualification would result in a failure of justice.

Question 2: Is recusal mandatory in cases involving an attorney against whom the judge has previously filed a complaint to the Board of Overseers or against whom the judge has imposed sanctions or other discipline assuming that the judge believes that he or she can act in any such cases with impartiality?

Answer: There is nothing in either the present or proposed Codes that would require disqualification.