

## Chapter 20. Officers and Employees

### Article

#### 1. Judicial Officers (§ 22.20.020)

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### Section

#### 20. Disqualification of judicial officer for cause.

#### Sec. 22.20.020. Disqualification of judicial officer for cause.

(a) A judicial officer may not act in a matter in which

- (1) the judicial officer is a party;
- (2) the judicial officer is related to a party or a party's attorney by consanguinity or affinity within the third degree;
- (3) the judicial officer is a material witness;
- (4) the judicial officer or the spouse of the judicial officer, individually or as a fiduciary, or a child of the judicial officer has a direct financial interest in the matter;
- (5) a party, except the state or a municipality of the state, has retained or been professionally counseled by the judicial officer as its attorney within two years preceding the assignment of the judicial officer to the matter;
- (6) the judicial officer has represented a person as attorney for the person against a party, except the state or a municipality of the state, in a matter within two years preceding the assignment of the judicial officer to the matter;
- (7) an attorney for a party has represented the judicial officer or a person against the judicial officer, either in the judicial officer's public or private capacity, in a matter within two years preceding the filing of the action;
- (8) the law firm with which the judicial officer was associated in the practice of law within the two years preceding the filing of the action has been retained or has professionally counseled either party with respect to the matter;
- (9) the judicial officer feels that, for any reason, a fair and impartial decision cannot be given.

(b) A judicial officer shall disclose, on the record, a reason for disqualification specified in (a) of this section at the commencement of a matter in which the judicial officer participates. The disqualifications specified in (a)(2), (a)(5), (a)(6), (a)(7), and (a)(8) of this section may be waived by the parties and are waived unless a party raises an objection.

(c) If a judicial officer is disqualified on the officer's own motion or consents to disqualification, the presiding judge of the district shall immediately transfer the action to another judge of that district to which the objections of the parties do not apply or are least applicable and if there is no such judge, the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. If a judicial officer denies disqualification the question shall be heard and determined by another judge assigned for the purpose by the presiding judge of the next higher level of courts or, if none, by the other members of the supreme court. The hearing may be ex parte and without notice to the parties or judge. (§ 54-2-1 ACLA 1949; am § 1 ch 48 SLA 1967; am §§ 10, 11 ch 38 SLA 1987; am § 38 ch 50 SLA 1989)

**Effect of amendments.** — The 1987 amendment rewrote subsections (a) and (b). The 1989 amendment, effective May 27, 1989, substituted “is disqualified on the officer’s own motion” for “disqualifies himself or herself” in the first sentence of subsection (c).

**NOTES TO DECISIONS**

- I. General Consideration.  
II. Bases for Disqualification.

**I. GENERAL CONSIDERATION.**

**"Presiding judge of the next higher level of courts"** referred to in subsection (c) could appoint himself to consider a recusal motion. *Feichtinger v. State*, 779 P.2d 344 (Alaska Ct. App. 1989).

**Motion to recuse judges before whom case had never been assigned.** — Judge appointed to consider a challenge to another judge pursuant to subsection (c) did not err by concluding that a motion to recuse all trial court judges, including judges to whom the case had never been assigned and who therefore had never had the opportunity to exercise discretion, was improper. *Feichtinger v. State*, 779 P.2d 344 (Alaska Ct. App. 1989).

**Scope of review.** — The sole legislative authority for disqualification of a trial judge, over the judge's objection, is found in this section. Such a decision may only be overturned where there is an abuse of discretion. *Feichtinger v. State*, 779 P.2d 344 (Alaska Ct. App. 1989). **Quoted** in *Denardo v. Michalski*, Sup. Ct. Op. No. 3691 (File No. S-3871), P.2d (1991). **Cited** in *Standard Alaska Prod. Co. v. Schaible*, 874 F.2d 624 (9th Cir. 1989).

**II. BASES FOR DISQUALIFICATION.****Maintenance of appearance of impartiality.**

Judge erred in declining to recuse himself from a sentencing hearing after having presided over a prior juvenile waiver hearing based on the same conduct, where, considering the totality of the circumstances, fair-minded persons apprised of the objective facts would have concluded that the judge's participation in the sentencing hearing created an appearance of partiality. *Perotti v. State*, 806 P.2d 325 (Alaska Ct. App. 1991).

**Review of decisions under paragraph (a)(9).**

A judge challenged under subsection (a)(9) is independently required to consider not only actual impartiality, but also the appearance that is likely to flow from participation in the case at issue. Moreover, the need to consider the appearance of impartiality seems implicit in the language of subsection (a)(9), for whenever it is predictable that an unmistakable appearance of bias will arise from a judge's participation in a case, there will be "reason" for concluding that "a fair and impartial decision cannot be given." *Perotti v. State*, 806 P.2d 325 (Alaska Ct. App. 1991).

**A judge's exposure to inadmissible evidence** does not necessarily result in prejudice warranting recusal. Likewise, the fact that a judge commits error in the course of a proceeding does not automatically give rise to an inference of actual bias. *Perotti v. State*, 806 P.2d 325 (Alaska Ct. App. 1991).

**Sec. 22.20.022. Peremptory disqualification of a judge.**

**Editor's notes.** — Section 1(c), ch. 18, SLA 1991 states that it "was not the intent of the legislature in enacting AS 22.20.022 to allow the disqualification of a judge, if the judge has no financial interest in the outcome of the case other than that of a taxpayer or a permanent fund dividend recipient."