

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 05-01  
(February 9, 2005)

**Disqualification in Cases Involving  
Chairman of Judge's Campaign Committee**

**Issues**

1. May a judge hear cases involving a business co-owned by a friend of the judge and the chairman of the judge's campaign committee?

**Answer:** No.

2. If not, may the judge cure the problem by instructing his staff to issue a minute entry after an answer is filed that discloses the potential conflict and gives the parties an opportunity to object on the record?

**Answer:** Yes, with qualifications.

3. May the judge sign default judgments in favor of the business in cases where the defendants do not appear?

**Answer:** No.

**Facts**

During a trial, a judge learned from a witness's testimony that a co-owner of the plaintiff business was his friend and the chairman of his recent election campaign. The judge disclosed this conflict on the record, gave the parties an opportunity to confer outside the courtroom, and then continued the proceedings when neither side objected. The judge then asked a court clerk to pull the pending cases involving that business so that they could be transferred to another court. When the clerk told the judge that the business had filed more than 350 cases in the last three years, the judge requested an advisory opinion. The court is a high-volume justice court that processes more than 9,000 civil, forcible detainer and small claims cases a year in addition to misdemeanor, traffic and DUI cases.

**Discussion**

**Issue 1**

Canon 3E(1) requires a judge to disqualify himself or herself in any proceeding where "the judge's impartiality might reasonably be questioned . . . ." While the rule outlines specific instances where disqualification is required, it is not limited to those circumstances. The committee has previously stated that judges should apply a "reasonableness test" and "must use their best judgment as to whether or not to disqualify themselves automatically." Op. 95-11.

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Other provisions of the canons should inform the exercise of that judgment. For example, Canon 2B provides that “[a] judge shall not allow family, social, political or other relationships to influence the judge’s judicial conduct or judgment.” Even if the judge has concluded that the relationship he has with the co-owner, both as a friend and as a person having some responsibility for his election to office, will not influence his conduct or judgment, the judge must also examine whether others—specifically, opposing parties—could reasonably question his or her impartiality. “Stated another way, would the facts known to the judge suggest the appearance of impropriety to a reasonable person?” Op. 95-11.

The facts here include a personal friendship with the co-owner, as well as the latter’s efforts to secure the judge’s election. Each fact alone, and certainly both together, would permit a reasonable person to question the judge’s impartiality. Accordingly, the judge should disqualify himself or herself in any contested proceedings.

### **Issue 2**

If the judge believes there is no question of actual bias, he or she may seek a remittal of disqualification under Canon 3F. Issuing a minute entry outlining the potential conflict after an answer has been filed would provide the notice required under this canon. However, the order should not place the burden on any party to object; rather, the order should advise the parties that unless the court receives a written agreement that the judge may continue to hear the case by a date certain, the case will be reassigned to another judge.

### **Issue 3**

The focus of the inquiry in every case must be on whether there is a basis for the judge to disqualify himself or herself, not on the defendant’s decision to appear or default. The fact that a defendant fails to enter an appearance in a case does not negate the original basis for disqualification. Moreover, Canon 3F requires affirmative action by both parties to permit the judge to continue to hear the matter following disqualification. If the defendant does not appear, the requirements of the canon for remittal of disqualification cannot be met. This conclusion is consistent with recent decisions of the Commission on Judicial Conduct, which has disciplined judges for signing default judgments in cases where the judge had previously disqualified himself or herself.

Finally, we note that where disqualification is required and the defendant defaults, justices of the peace may wish to consider transferring such cases to a justice of the peace in another precinct under A.R.S. § 22-114(C).

### **Applicable Code Sections**

Arizona Code of Judicial Conduct, Canons 2B, 3E(1) and 3F (1993).

### **Other References**

Arizona Judicial Ethics Advisory Committee, Opinion 95-11 (June 16, 1995).

A.R.S. § 22-114(C).