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2017 Edition

Recusal (Disqualification of Judicial Authority)

A Guide to Resources in the Law Library

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Introduction

- "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." [Conn. Practice Book § 1-22\(a\)](#) (2017).
- "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. When the judicial authority has been made aware of the filing of such lawsuit or complaint, he or she shall so advise the attorneys and parties to the proceeding and 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." [Conn. Practice Book § 1-22\(b\)](#) (2017).
- "A motion to disqualify a judicial authority shall be in writing and shall be accompanied by an affidavit setting forth the facts relied upon to show the grounds for disqualification and a certificate of the counsel of record that the motion is made in good faith. The motion shall be filed no less than ten days before the time the case is called for trial or hearing, unless good cause is shown for failure to file within such time." [Conn. Practice Book § 1-23](#) (2017).
- "[General Statutes of Connecticut] Section 51-39 disqualifies a judge both for relationship and for interest. If the judge comes within the statutory criteria, the disqualification is mandatory. The objective of the statute is to assure that the person who participates in any judicial proceeding in a judicial capacity is disinterested." [Dacey v. Connecticut Bar Assn.](#), 184 Conn. 21, 26-27, 441 A.2d 49 (1981).
- "The defendant's claim of judicial bias must fail because he did not file a motion for disqualification in the trial court. We have repeatedly refused to consider claims of trial court bias in the absence of such a motion." [Bieluch v. Bieluch](#), 199 Conn. 550, 552-553, 509 A.2d 8 (1986).
- "It is a well settled general rule that courts will not review a claim of judicial bias on appeal unless that claim was properly presented to the trial court via a motion for disqualification or a motion for mistrial." [Gillis v. Gillis](#), 214 Conn. 336, 343, 572 A.2d 323 (1990).

Section 1: Motion for Disqualification of Judicial Authority

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the motion for disqualification of judicial authority (recusal).

SEE ALSO:

- [Section 2](#): Disqualification for bias or prejudice

DEFINITIONS:

- "A **motion to disqualify** a judicial authority shall be in writing and shall be accompanied by an affidavit setting forth the facts relied upon to show the grounds for disqualification and a certificate of the counsel of record that the motion is made in good faith. The motion shall be filed no less than ten days before the time the case is called for trial or hearing, unless good cause is shown for failure to file within such time." [Conn. Practice Book](#) § [1-23](#) (2017).
- **De minimis**: "in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality." [Conn. Practice Book](#), Code of Judicial Conduct, [Terminology](#) (2017).
- **Economic interest**: "means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include: (1) an interest in the individual holdings within a mutual or common investment fund; (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant; (3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or (4) an interest in the issuer of government securities held by the judge." [Conn. Practice Book](#), Code of Judicial Conduct, [Terminology](#) (2017).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2017).
Chapter [872](#). Judges
§ [51-39](#). Disqualification by relationship or interest.
Judge or family support magistrate may act with consent of parties

Chapter [872a](#). Removal, suspension and censure of judges
§ [51-51s](#). Disqualification of judge, compensation

commissioner or family support magistrate

Chapter [882](#). Superior Court

§ [51-183](#). Substitute judge

§ [51-183a](#). Judge's inability to hold court

§ [51-183c](#). Same judge not to preside at new trial

§ [51-183d](#). Disqualified judge; Proceedings not void

§ [51-183f](#). Expiration of term, disability retirement, death or resignation of judge

§ [51-183g](#). Retiring judge; unfinished matters

Chapter [902](#). Appeals to the Supreme Court

§ [52-268](#). New trial when judge, stenographer or court reporter dies or becomes incapacitated and review of errors not possible

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- [Conn. Practice Book](#) (2017).
 - § [1-22](#). Disqualification of judicial authority
 - § [1-23](#). Motion for disqualification of judicial authority

CODE OF JUDICIAL CONDUCT:

- [Conn. Practice Book](#) (2017).
 - [Canon 2](#). A Judge Shall Perform the Duties of Judicial Office Impartially, Competently, and Diligently
 - [Rule 2.3](#). Bias, Prejudice, and Harassment
 - [Rule 2.11](#) Disqualification

FORMS:

- 15 [Am Jur Pleading and Practice Forms Judges](#) (2016).
 - Disqualification to act in a particular case (§§ 2 to 62)
 - § 4. Motion—To disqualify judge—General form
 - § 15. Motion and notice—To disqualify judge—Prejudice of judge and undue influence of adverse party
 - § 18. Motion—To disqualify judge—Dissolution of marriage—Bias in custody matter
 - § 33. Motion and Notice—Disqualification of judge—For interest
 - § 34. Affidavit—In support of motion to disqualify judge for interest—General form
 - § 44. Motion and notice—To disqualify judge—Relationship to attorney
- 50 [Am Jur Proof of Facts 3d](#) 449, *Disqualification of Trial Judge for Cause* (1999).
 - § 35. Sample letters to judge
 - § 38. Motion for disqualification for cause (mandatory grounds)
 - § 39. Motion for disqualification for cause (discretionary grounds)

- 8B [Am Jur Pleading and Practice Forms](#) *Divorce and Separation* (2015).
§ 225. Motion—Disqualification of judge on grounds of bias—Child custody proceeding

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Pryor v. Pryor](#), 162 Conn. App. 451, 459-460, 133 A.3d 463 (2016). “. . . the defendant states that the court ‘routinely denied [his] motions,’ that the court ‘commented on [his] motivation and/or conduct based upon the fact that he is an attorney,’ that the court ‘ignored motions filed by [the defendant] and then advised that they were stale,’ and that the court ‘routinely granted [the plaintiff’s] motions’ There is not a single reference to the transcript, an exhibit or any other document in the record to support these allegations. It is not this court’s function to comb through the voluminous trial court file, which contains more than three hundred entries, to determine whether the defendant’s claim is supported by the record. See *Stuart v. Stuart*, 112 Conn. App. 160, 183, 962 A.2d 842 (2009), rev’d in part on other grounds, 297 Conn. 26, 996 A.2d 259 (2010).”
- [Stefanoni v. Darien Little League, Inc.](#), 160 Conn. App. 457, 466, 124 A. 3d 999 (2015). “We therefore are confronted with a claim of impartiality stemming from a judge’s relationship with a person tangential to the material issues to be decided by the court. As our Supreme Court has noted, ‘[d]isqualification is not necessarily required even when his former law partner appears before a trial judge....’ (Citations omitted.) *Bonelli v. Bonelli*, 214 Conn. 14, 20, 570 A.2d 189 (1990).”
- [Rozbicki v. Gisselbrecht](#), 152 Conn. App. 840, 852, 100 A. 3d 909 (2014). “A hearing before another judge was not required in this case. In order to require an evidentiary hearing before another judge on a motion for disqualification, the party asserting bias of the trial judge must ‘state facts on the record which, if true, give fair support to his claim. If those facts, taken as true, give that fair support, the party is entitled to an evidentiary hearing on those facts before another judge.’ *Szypula v. Szypula*, 2 Conn. App. 650, 656, 482 A.2d 85 (1984).”
- [McKenna v. Delente](#), 123 Conn. App. 137, 143, 1 A.3d 260 (2010) “The inquiry into whether a motion for disqualification properly was ruled upon is governed by the abuse of discretion standard of review. See *id.*, 282. ‘In applying that standard, we ask whether an objective observer reasonably would doubt the judge’s impartiality given the circumstances....If an objective observer, in view of all of the facts would reasonably doubt the court’s impartiality, the court’s discretion would be abused if a motion to recuse were not granted. In determining whether there has been an abuse of discretion, every reasonable

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presumption should be given in favor of the correctness of the court's ruling....Reversal is required only where an abuse of discretion is manifest or where injustice appears to have been done.' "

- [Rosado v. Bridgeport Roman Catholic Diocesan Corp.](#), 292 Conn. 1, 22, 970 A.2d 656 (2009). "A trial judge has no affirmative duty to step down from a case merely on the basis of membership on a task force unless the agenda of the task force is inconsistent with the judge's duty to judge impartially. Case law confirms that service on a commission concerned with improving the legal system and the administration of justice, without more, is not a basis for disqualification, even if the subject matter generally relates to the area of the law at issue in the case at hand. See *United States v. Glick*, 946 F.2d 335, 337 (4th Cir. 1991)."
- [Tracey v. Tracey](#), 97 Conn. App. 278, 284, 903 A.2d 679, 683 (2006). "In *State v. Webb*, supra, 238 Conn. at 461, 680 A.2d 147, our Supreme Court rejected 'the defendant's argument that the mere fact that the same trial judge presided over both trials raises a reasonable question about the judge's impartiality. Courts have routinely held that the prior appearance of a party before a trial judge does not reflect upon the judge's impartiality in a subsequent action involving that party.' See also *In re Heather L.*, 274 Conn. 174, 177, 874 A.2d 796 (2005) ('respondent has provided no authority for the proposition that a judge's familiarity with a party's personal history by virtue of the judge's participation in a prior proceeding, standing alone and without any showing of bias, requires disqualification')."
- [Consiglio v. Consiglio](#), 48 Conn. App. 654, 661-62, 711 A.2d 765 (1998). "When the trial judge decided to recuse himself from all future matters involving Chiarelli, this should have ended any concern for either Chiarelli or the trial judge over his hearing of cases involving Chiarelli. It was inappropriate for the presiding judge to instruct the trial judge to hear this case. The presiding judge does not have the power to tell a trial judge when he or she may or may not recuse himself or herself. The matter of a judge's recusal is in the reasonable discretion of that judge, and is not to be overruled by a presiding judge. The decision to recuse oneself is an intrinsic part of the independence of a judge. Any attempt to instruct or order a judge to hear a matter after recusal, violates the independence of judges individually and the judiciary as a whole."
- [Bieluch v. Bieluch](#), 199 Conn. 550, 552-553, 509 A.2d 8 (1986). "The defendant's claim of judicial bias must fail because he did not file a motion for disqualification in the trial court. We have repeatedly refused to consider claims of trial court bias in the absence of such a motion."

- [Cameron v. Cameron](#), 187 Conn. 163, 170, 444 A.2d 915 (1982). “Proof of actual bias is not required for disqualification....The appearance as well as the actuality of impartiality on the part of the trier is an essential ingredient of a fair trial.”
- [Dacey v. Connecticut Bar Association](#), 184 Conn. 21, 27, 441 A.2d 49 (1981). “The relationship clause disqualifies a judge whenever he bears so near a relation to a party to a proceeding before him, as between father and son, brothers or uncle and nephew, by nature or marriage, or landlord and tenant. The specified relationships are not all inclusive; ‘as’ here denotes similitude rather than definition.”

WEST KEY NUMBERS:

- *Judges* # 39-56. Disqualification to act
- *Appeal and Error* # 185(3). Disqualification of judge
- *Judgment* # 9.
- *Venue* # 49.

DIGESTS:

- ALR Digest: *Judges* §§ 39-56
- Donald H. Dowling, Digest of Connecticut decisions (1990).
Judges § 2. Disqualification

INDEX TERMS:

- Judges, Disqualification

ENCYCLOPEDIAS:

- 46 [Am. Jur. 2d](#) *Judges* (2006).
§§ 80-257. Disqualification to act in particular case
- 52 [Am. Jur. 2d](#) *Mandamus* (2011).
§ 317. Disqualification of judge
§ 318. —Compelling judge to recuse self or certify disqualification
§ 319. —Automatic disqualification of judge
- 48A [C.J.S.](#) *Judges* (2014).
§§ 236-345. Disqualification to act
- 55 [C.J.S.](#) *Mandamus* (2009).
§ 82. Judges—Disqualification
§ 83. Judges—Recusal
- 15 [Am Jur Pleading and Practice Forms](#) *Judges* (2016).
Disqualification to act in a particular case (§§ 2 to 63)
- 50 [Am Jur Proof of Facts 3d](#) 449, *Disqualification of Trial Judge for Cause* (1999).
§ 5. Mandatory recusal
§ 6. —Personal interest in litigation
§ 6.5—Personal interest of judge’s spouse or child
§ 7. —Financial interest
§ 8. —Familial relationships
§ 9. —Prior association with case

- § 9.5-Involvement in mediation or settlement negotiations
- § 10. —Former law clerks
- § 11. —Judge as material witness
- § 17. Exclusions
- §§ 18—25.5. Procedures for disqualification
- §§ 26-29. Tactical considerations
- §§ 30-32. Elements of proof
- §§ 33-42. Model correspondence, motions and discovery
- §§ 43-65. Proof that judge should be disqualified

TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Charles G. Geyh et al., [Judicial Conduct and Ethics](#), 5th ed. (2013).
 - Chapter 4. Disqualification
 - § 4.01. Scope of Chapter
 - § 4.02. Disqualification and the Code of Judicial Conduct
 - § 4.03. The Duty to Sit
 - § 4.04. The Rule of Necessity
 - § 4.05. Disqualification When A Judge’s Impartiality Might Reasonably Be Questioned
 - § 4.06. Disqualification for Personal Bias or Prejudice
 - § 4.07. Real and Reasonably Perceived Partiality: Recurring Scenarios
 - § 4.08. Contextual Limits on Real and Reasonably Perceived Partiality: The Extrajudicial Source Rule
 - § 4.09. Acts Calculated to Create Real or Perceived Partiality
 - § 4.10. Prior Knowledge of Facts
 - § 4.11. Family Relationships
 - § 4.12. Judge or Relative as a Witness
 - § 4.13. Judge as a Party
 - § 4.14. Professional Relationships – Prior Service as Attorney in the Matter
 - § 4.15. Economic and Other Interests
 - § 4.16. Campaign Contributors
 - § 4.17. Commitments and Apparent Commitments
 - § 4.18. Waiver and Remittal of Disqualification

- 1 Wesley Horton and Kimberly A. Knox, [Connecticut Practice Series: Superior Court Civil Rules](#). (2016-2017 ed.) *Authors’ Comments* following Rule 2.11.

- Richard E. Flamm, [Judicial Disqualification: Recusal and Disqualification of Judges](#), 2nd ed. (2007).
 - Part I. Introductory materials
 - Part II. Disqualification for bias or its appearance
 - Part III. Interest and relationship
 - Part IV. Background, experience, and knowledge
 - Part V. Judicial conduct, comments, and rulings
 - Part VI. Procedure, timeliness, and legal sufficiency
 - Part VII. Deciding judicial disqualification motions
 - Part VIII. Disqualification in federal court

Part IX. Disqualification in state court
Part X. Disqualification in special types of proceedings
Part XI. Appeal

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- David M. Rothman, [California Judicial Conduct Handbook](#), 2nd ed. (1999).
 - Chapter 7: Disqualification
 - §§ 7.20 – 7.27. Grounds for disqualification
 - §§ 7.30 – 7.63. Common disqualification problems
 - §§ 7.30 – 7.44. Relationships with those before the court
 - § 7.30. Financial relationships generally
 - § 7.31. Financial interest in a party
 - § 7.32. Doing business with attorneys or parties
 - § 7.33. Relationships with financial institutions
 - § 7.34. Relationships with insurance companies
 - § 7.35. Judge's future career opportunities
 - § 7.36. Judge as a party or witness
 - §§ 7.37-7.44. Relationships of judge as an attorney or with attorneys
 - §§ 7.45 – 7.54. Activities or involvement in proceedings of those whom judge has relationship
 - § 7.45. Spouse
 - § 7.46. Family members
 - § 7.50. Romantic involvement
 - § 7.51. Social friendships
 - § 7.52. Other judges and staff members
 - § 7.53. Public officials
 - § 7.54. Other relationships
 - § 7.57. Out-of-court activities
 - § 7.58. Expressing opinions
 - § 7.59. Personal knowledge and ex parte contacts
 - § 7.60. Attacks on the judge by participants in pending proceeding
 - §§ 7.70 – 7.72. Avoiding disqualification problems
- Arthur Garwin et al., [Annotated Model Code of Judicial Conduct](#), 2nd ed. (2011).

Table 1: Rule of Necessity

| Rule of Necessity | |
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| <p><u>Betensky v. Opcon Associates, Inc.</u>, Superior Court, Judicial District of New Haven at New Haven, No. CV99-0421034S (Apr. 15, 1999) (46 Conn. Supp. 110, 118) (738 A.2d 1171) (24 Conn. L. Rptr. 327)</p> | <p>“Given the fact that courts have an institutional obligation to hear and decide the cases brought before them, the common law long ago created what is referred to in judicial disqualification cases as the Rule of Necessity. Stated succinctly, the Rule of Necessity is that if everyone is disqualified, no one is disqualified. Thus, in a judicial salary case, where all judges by definition have an interest in the outcome of the case, the judge assigned the case has a duty to hear and decide the case, however disagreeable that task might be. <i>United States v. Will</i>, 449 U.S. 200, 213-16 (1980). This rule is grounded in '[t]he concept of the absolute duty of judges to hear and decide cases within their jurisdiction.' <i>Id.</i> at 215.” (emphasis added).</p> |
| <p><u>Sand Dollar Development Group, LLC v. Peter Michael, Inc.</u>, Superior Court, Judicial District of New Haven at New Haven, Housing Session, No. SPNH 9610-48736 (Dec. 10, 1997) (1997 Conn. Super. LEXIS 3551) (1997 WL 867718)</p> | <p>“While this is not a case where the rule of necessity must be invoked, a discretionary recusal here, while convenient to the judge, would be inconvenient to the administration of justice. This case is pending in the Housing Session of the Superior Court. See General Statutes § 47a-68. This judge is the only judge assigned to housing matters in this judicial district. See Connecticut Law Journal, August 19, 1997, pp. 1D, 13D. This is a particular assignment. See General Statutes § 51-165(c). This case cannot simply be lateralled to another judge of the Superior Court and subserve the purpose of the summary process action.”</p> |
| <p><u>Dacey v. Connecticut Bar Association.</u>, 184 Conn. 21, 23-24, 441 A.2d 49 (1981).</p> | <p>“While there is language in Dacey I concerning the non-disqualifying effect of either a pecuniary interest which is de minimis or mere membership in a state bar association, to the extent that a discussion of these issues was unnecessary to the holding in the case the language is mere dictum. <i>Diamond National Corporation v. Dwelle</i>, 164 Conn. 540, 544, 325 A.2d 259 (1973). The law of the case principle applies only to those matters essential to the appellate court's determination, not to mere dictum. <i>Barney v. Winona & St. Peter R.R. Co.</i>, 117 U.S. 228, 231, 6 S.Ct. 654, 29 L.Ed. 858 (1886); 5 Am.Jur.2d, Appeal and Error 753. The Dacey I court having determined the disqualification issue on the basis of necessity, the additional discussion was merely passing commentary. The rule of necessity would still obtain whatever the extent of the pecuniary interest of the individual justices and whether or</p> |

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| | <p>not membership in a state bar association was a disqualifying element in every case where the association was a party. Because at the second trial other judges who were not members of the state bar association could have been assigned to the trial of the case there was no compelling reason for a bar association member to preside. In these circumstances, in addressing the disqualification issue on this appeal, we write on a clean slate.” [emphasis added].</p> |
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Table 2: Statutory Disqualification

| Statutory Disqualification | |
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| <p>Dacey v. Connecticut Bar Assn., 184 Conn. 21, 26-28, 441 A.2d 49 (1981)</p> | <p>“Section 51-39 disqualifies a judge both for relationship and for interest. If the judge comes within the statutory criteria, the disqualification is mandatory. The objective of the statute is to assure that the person who participates in any judicial proceeding in a judicial capacity is disinterested. <i>Groton and Ledyard v. Hurlburt</i>, 22 Conn. 178, 191 (1852). The relationship clause disqualifies a judge whenever he bears so near a relation to a party to a proceeding before him, as between father and son, brothers or uncle and nephew, by nature or marriage, or landlord and tenant. The specified relationships are not all inclusive; "as" here denotes similitude rather than definition. <i>Cf. Morgan Bond Co. v. Stephens</i>, 181 Okla. 419, 421, 74 P.2d 361 (1937); <i>Bolton's Estate</i>, 13 Phila. 340, 346 (1880) (Penrose, J., dissenting).</p> <p>An examination of some of the relationships which are not included in 51-39 but which are disqualifying nonetheless makes it clear that the statutory list is illustrative rather than exhaustive. Husband and wife are not specified in the statute but no one would seriously argue a judge's disqualification where his spouse was a party. Nor could it be contended that those relationships such as master and servant and attorney and client, which would conclusively disqualify a prospective juror; <i>McCarten v. Connecticut Co.</i>, 103 Conn. 537, 542, 131 A. 505 (1925); would not also disqualify the judge. "It is a well-recognized principle of natural justice that a man ought not to be a judge in his own case. Irrespective of any proof of bias or prejudice, the law presumes that a party to a dispute is not disinterested and does not possess the impartiality so essential to proper judicial action regarding it. This absolute disqualification to act rests on sound public policy. Any other rule is repugnant to a proper sense of justice." <i>Ellis v. Emhart Mfg. Co.</i>, 150 Conn. 501, 505-506, 191 A.2d 546 (1963).</p> <p>With respect to corporations, the relationship of a stockholder to a private corporation is such that a judge who owns stock in a corporation appearing before him is disqualified to act. <i>Windham Cotton Man'g Co. v. H., P. & F.R.R. Co.</i>, 23 Conn. 373, 384, (1854). A judge who stands within the prohibited degrees of relationship to a stockholder is also disqualified. <i>Wood v. Hartford Fire Ins. Co.</i>, 13 Conn. 202, 211 (1839). In the case of public corporations such as towns we have held that a judge, as a town taxpayer, was disqualified to act in a case in which the town was a party. <i>Hawley v. Baldwin</i>, 19 Conn. 585, 590 (1849). This disqualification was removed by the legislature in 1863. Public Acts 1863, c. 36. We have also held that for some purposes members of ecclesiastical corporations are to be treated no</p> |

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| | <p>differently than inhabitants of towns. <i>Atwater v. Woodbridge</i>, 6 Conn. 223, 228-29 (1826), overruled on other grounds in <i>Lord v. Litchfield</i>, 36 Conn. 116, 130 (1869). When the disqualification statute was amended in 1871 with reference to ecclesiastical corporations, it retained disqualification in cases where the corporation is a party. Public Acts 1871, c. 52. For the purpose of disqualification membership in a non-stock corporation should be treated no differently than membership in an ecclesiastical corporation. In short, when applying 51-39 we treat stock and non-stock corporations alike. In both cases we look under the corporate carapace and view the stockholders or members as the real parties in interest.”</p> |
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Section 2: Disqualification for Bias or Prejudice

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to bias or prejudice as the basis for disqualification of judicial authority

DEFINITIONS:

- “(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;
(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. . . .” [Code of Judicial Conduct, Rule 2.11](#).
- **Manifestations of bias or prejudice:** “include, but are not limited to, epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based on stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and criminality; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.” [Conn. Practice Book, Code of Judicial Conduct, Rule 2.3\(c\)](#) (2017).
- **Extrajudicial Source Rule:** “The alleged bias and prejudice must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.” [United States v. Grinnell Corp.](#), 384 U.S. 563, 583, 86 S.Ct. 1698, 16 L.Ed.2d 778 (1966).
- “It is a well settled general rule that courts will not review a claim of judicial bias on appeal unless that claim was properly presented to the trial court via a motion for disqualification or a motion for mistrial.” [Gillis v. Gillis](#), 214 Conn. 336, 343, 572 A.2d 323 (1990).

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- [Conn. Practice Book](#) (2017).
 - § [1-22](#). Disqualification of judicial authority
 - § [1-23](#). Motion for disqualification of judicial authority

CODE OF JUDICIAL CONDUCT:

- [Conn. Practice Book](#) (2017).
Canon 2. A Judge Shall Perform the Duties of Judicial Office Impartially, Competently, and Diligently
[Rule 2.3](#). Bias, Prejudice, and Harassment
[Rule 2.11](#). Disqualification

FORMS:

- 15 [Am Jur Pleading and Practice Forms](#) *Judges* (2016).
Disqualification to act in a particular case (§§ 2 to 63)
§ 4. Motion—To disqualify judge—General form
§ 8. Response—To motion for disqualification of judge for bias, or prejudice—By opposing party
§ 15. Motion and notice—To disqualify judge—Prejudice of judge and undue influence of adverse party
§ 16. Motion and notice—Disqualification of judge—Personal bias or prejudice
§ 18. Motion and notice—To disqualify judge—Dissolution of marriage—Bias in custody matter
§ 19. Affidavit—To disqualify judge for prejudice—General form
§ 20. Affidavit—In support of motion to disqualify judge for personal bias or prejudice
§ 21. Affidavit—In support of motion to disqualify judge for personal bias or prejudice—With certificate of counsel
- 50 [Am Jur Proof of Facts 3d](#) 449, *Disqualification of Trial Judge for Cause* (1999).
§ 35. Sample letters to judge
§ 39. Motion for disqualification for cause (discretionary grounds)
- 8B [Am Jur Pleading and Practice Forms](#) *Divorce and Separation* (2015).
§ 225. Motion—Disqualification of judge on grounds of bias—Child custody proceeding

WEST KEY NUMBERS:

Judges # 39-56. Disqualification to act
49. Bias and prejudice
Appeal and Error # 185(3). Disqualification of judge
Judgment # 9.
Venue # 49.

DIGESTS:

ALR Digest: *Judges* §§ 39-56
Donald H. Dowling, Digest of Connecticut decisions (1990).
Judges § 2. Disqualification

COMMITTEE ON JUDICIAL ETHICS:

[Formal Opinions](#)
[Informal Summaries](#)
[Subject Index of Advisory Opinions 2008 through 2017](#)

CASES:

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- [State v. Carlos C.](#), 165 Conn. App. 195, 206-207, 138 A.3d 1090. (2016). "A claim of judicial bias is a very serious matter. 'Accusations of judicial bias or misconduct implicate the basic concepts of a fair trial.... It is a well settled general rule [however] that courts will not review a claim of judicial bias on appeal unless that claim was properly presented to the trial court via a motion for disqualification or a motion for mistrial.'(Citation omitted; internal quotation marks omitted.) *State v. Eric M.*, 79 Conn.App. 91, 102-103, 829 A.2d 439 (2003), aff'd, 271 Conn. 641, 858 A.2d 767 (2004). Nevertheless, our Supreme Court has recognized that 'a claim of judicial bias strikes at the very core of judicial integrity and tends to undermine public confidence in the established judiciary.... No more elementary statement concerning the judiciary can be made than that the conduct of the trial judge must be characterized by the highest degree of impartiality. If [the judge] departs from this standard, he [or she] casts serious reflection upon the system of which [the judge] is a part.... We review this [unpreserved] claim [of partiality], therefore ... under a plain error standard of review.' (Citations omitted; internal quotation marks omitted.) *Knock v. Knock*, 224 Conn. 776, 792-93, 621 A.2d 267 (1993)."
- [State v. Stanley](#), 161 Conn. App. 10, 32, 125 A. 3d 1078 (2015). "[M]ost questions concerning a judge's qualifications to hear a case are not constitutional ones, because the [d]ue [p]rocess [c]lause of the [f]ourteenth [a]mendment establishes a constitutional floor, not a uniform standard Instead, these questions are, in most cases, answered by common law, statute, or the professional standards of the bench and bar.... But the floor established by the [d]ue [p]rocess [c]lause clearly requires a fair trial in a fair tribunal ... before a judge with no actual bias against the defendant or interest in the outcome of his particular case.... [C]ertainly only in the most extreme of cases would disqualification on [the basis of allegations of bias or prejudice] be constitutionally required...."
- [Tate v. Safeco Insurance Company of Illinois et al.](#), 157 Conn. App. 432, 452-453, 116 A. 3d 386 (2015). "[W]e ... [previously] have reviewed unpreserved claims of judicial bias under the plain error doctrine [when specifically raised on appeal]. (Internal quotation marks omitted.) *Burns v. Quinnipiac University*, supra, 120 Conn. App. at 317, 991 A.2d 666. We have nevertheless declined to review claims of alleged judicial bias if no claim of plain error was made by a party on appeal. See *Blumberg Associates Worldwide, Inc. v. Brown & Brown of Connecticut, Inc.*, 311 Conn. 123, 162 n. 33, 84 A.3d

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840 (2014) (reviewing court is not required to 'raise an issue implicating plain error ... sua sponte if a party itself has failed to do so'); *State v. Moore*, 65 Conn. App. 717, 728, 783 A.2d 1100, declining review where no plain error claim was made), cert. denied, 258 Conn. 940, 786 A.2d 427 (2001). In this case, the plaintiff does not ask for a plain error review, and, thus, we decline to review her claim of judicial bias."

- [Michael G. v. Commissioner of Correction](#), 153 Conn. App. 556, 561-562, 102 A. 3d 132 (2014). "Furthermore, the petitioner has not requested explicitly that we consider his claim under the plain error doctrine—the proper legal principle reserved for instances of unpreserved claims involving judicial bias. We thus conclude that his claim is unpreserved and decline to review it. 'It is well settled that courts [generally] will not review a claim of judicial bias on appeal unless that claim was properly presented to the trial court through a motion for disqualification or a motion for a mistrial.' . . . 'Because an accusation of judicial bias or prejudice strikes at the very core of judicial integrity and tends to undermine public confidence in the established judiciary ... we ... have reviewed unpreserved claims of judicial bias under the plain error doctrine [when raised on appeal].' . . . We have, however, declined to review claims of alleged judicial bias if no claim of plain error was made by a party on appeal."
- [Rozbicki v. Gisselbrecht](#), 152 Conn. App. 840, 852, 100 A.3d 909 (2014). "The plaintiff's claim of judicial bias was based essentially on claims that Judge Danaher had exhibited bias by issuing rulings adverse to him. 'It is axiomatic, however, that an adverse or unfavorable ruling is not, in itself, evidence of judicial bias against a litigant.' *Traystman v. Traystman*, 141 Conn.App. 789, 803, 62 A.3d 1149 (2013)."
- [In re Zen T.](#), 151 Conn. App. 724, 731-732, 95 A. 3d 1258 (2014). "[S]peculation is insufficient to establish an appearance of impropriety. As this court has explained, [a] factual basis is necessary to determine whether a reasonable person, knowing all of the circumstances, might reasonably question the trial judge's impartiality . . . It is a fundamental principle that to demonstrate bias sufficient to support a claim of judicial disqualification, the due administration of justice requires that such a demonstration be based on more than opinion or conclusion . . . Vague and unverified assertions of opinion, speculation and conjecture cannot support a motion to recuse . . . (Internal quotation marks omitted.) *Tracey v. Tracey*, 97 Conn. App. 278,

284, 903 A. 2d 679 (2006).”

- [State of Connecticut v. Crespo](#), 145 Conn. App. 547, 581, 76 A. 3d 664 (2013). “Although a ‘trial judge should be cautious and circumspect in his language and conduct and should conduct a trial in an atmosphere of impartiality,’ ‘a passing display of exasperation, though worsened by its repetition, falls far short of a reasonable cause for disqualification for bias or prejudice....’ (Citations omitted; footnote omitted; internal quotation marks omitted.) *State v. Herbert*, 99 Conn.App. 63, 69–70, 913 A.2d 443, cert. denied, 281 Conn. 917, 917 A.2d 999 (2007).”
- [Francis v. Commissioner of Correction](#), 142 Conn. App. 530, 547, 66 A. 3d 501 (2013). “As our Supreme Court has recognized, ‘a judge’s failure to disqualify himself or herself will implicate the due process clause only when the right to disqualification arises from *actual bias* on the part of that judge.’ (Emphasis in original.) *State v. Canales*, 281 Conn. 572, 594, 916 A.2d 767 (2007); *id.*, at 592, 916 A.2d 767 (further stating that ‘although it is much preferred that a judge who issues a warrant should not preside over the probable cause hearing in the same matter, the failure to adhere to such a practice does not constitute a constitutional violation’).”
- [In re Messiah S.](#), 138 Conn. App. 606, 624–625, 53 A. 3d 224 (2012). “The alleged bias and prejudice, to be disqualifying, must stem from an *extrajudicial source* and result in an opinion on the merits on some basis other than what the judge learned from his [or her] participation in the case.... Moreover, to support a claim of disqualification, the judge’s comments must express a personal bias against the parties and not merely be directed at the merits of the defense claimed based on information presented to him [or her] during a trial on the merits.” (Citations omitted; internal quotation marks omitted.) *Barca v. Barca*, 15 Conn.App. 604, 613, 546 A.2d 887, cert. denied, 209 Conn. 824, 552 A.2d 430 (1988).”
- [Statewide Grievance Committee v. Burton](#), 299 Conn. 405, 416, 10 A. 3d 507 (2011). “The defendant next claims that the trial court displayed bias and prejudice against her. We disagree. In reviewing a claim of judicial bias, this court employs a plain error standard of review. *Knock v. Knock*, 224 Conn. 776, 792–93, 621 A.2d 267 (1993). ‘The standard to be employed is an objective one, not the judge’s subjective view as to whether he or she can be fair and impartial in hearing the case.... Any conduct that would lead a reasonable [person] knowing all the circumstances to the conclusion that the judge’s

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

impartiality might reasonably be questioned is a basis for the judge's disqualification.' (Internal quotation marks omitted.) *State v. Shabazz*, 246 Conn. 746, 768–69, 719 A.2d 440 (1998), cert. denied, 525 U.S. 1179, 119 S.Ct. 1116, 143 L.Ed.2d 111 (1999).”

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Burns v. Quinnipiac University](#), 120 Conn. App. 311, 317, 991 A. 2d 666 (2010). “we ... have reviewed unpreserved claims of judicial bias under the plain error doctrine.... Plain error exists only in truly extraordinary situations where the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings.” (Citations omitted; internal quotation marks omitted.) *Doody v. Doody*, 99 Conn. App. 512, 523, 914 A.2d 1058 (2007).”
- [Peatie v. Wal-Mart Stores](#), 112 Conn. App. 8, 26, 961 A.2d 1016 (2009). “Our review of the plaintiff's claim of bias reveals that the ground asserted amounts to nothing more than a claim that the court's rulings were improper because they were not in her favor. Yet, '[a]dverse rulings do not themselves constitute evidence of bias.' *State v. Fullwood*, 194 Conn. 573, 582, 484 A.2d 435 (1984). Obviously, if a ruling against a party could be used as an indicia of bias, at least half of the time, every court would be guilty of being biased against one of two parties. Moreover, the 'fact that a trial court rules adversely to a litigant, even if some of these rulings were determined on appeal to have been erroneous, [still] does not demonstrate personal bias.' *Bieluch v. Bieluch*, 199 Conn. 550, 553, 509 A.2d 8 (1986).”
- [Doody v. Doody](#), 99 Conn. App. 512, 523, 914 A.2d 1058 (2007). “Ordinarily, we will not review a claim of judicial bias on appeal unless that claim was properly presented to the trial court through a motion for disqualification or a motion for mistrial. *Cameron v. Cameron*, 187 Conn. 163, 168, 444 A.2d 915 (1982). Because an accusation of judicial bias or prejudice 'strikes at the very core of judicial integrity and tends to undermine public confidence in the established judiciary'; (internal quotation marks omitted) *id.*; however, we nonetheless have reviewed unpreserved claims of judicial bias under the plain error doctrine.”
- [Joyner v. Commissioner Of Correction](#), 55 Conn. App. 602, 608, 740 A.2d 424 (1999). “Any factual disputes involved in a claim of judicial bias may require an evidentiary hearing and, if so, it should be conducted before another judge.”

- [Abington Limited Partnership v. Heublein](#), 246 Conn. 815, 820, 717 A.2d 1232 (1998). “We use an objective rather than a subjective standard in deciding whether there has been a violation of Canon 3 (c) (1). ‘Any conduct that would lead a reasonable [person] knowing all the circumstances to the conclusion that the judge’s impartiality might reasonably be questioned is a basis for the judge’s disqualification. Thus, an impropriety or the appearance of impropriety . . . that would reasonably lead one to question the judge’s impartiality in a given proceeding clearly falls within the scope of the general standard. . . . The question is not whether the judge is impartial in fact. It is simply whether another, not knowing whether or not the judge is actually impartial, might reasonably question his . . . impartiality, on the basis of all of the circumstances. . . .’ (Citations omitted; internal quotation marks omitted.) *Papa v. New Haven Federation of Teachers*, 186 Conn. 725, 745-46, 444 A.2d 196 (1982); *Dubaldo v. Dubaldo*, 14 Conn. App. 645, 649, 542 A.2d 750 (1988).”
- [Felix v. Hall-Brooke Sanitarium](#), 140 Conn. 496, 501, 101 A.2d 500 (1953). “No more elementary statement concerning the judiciary can be made than that the conduct of the trial judge must be characterized by the highest degree of impartiality. If he departs from this standard, he casts serious reflection upon the system of which he is a part.”

ENCYCLOPEDIAS:

- 46 [Am. Jur. 2d](#) *Judges* (2006).
 - §§ 127-149. Bias or prejudice
 - § 131. Origin of bias; requirement that bias be extrajudicial
 - § 132. —Requirement that bias be personal
 - § 134. Effect of bring action against judge
 - § 136. Bias against attorney for party
 - § 140. Judge’s impartiality might reasonably be questioned
 - § 144. Judge’s past background and experiences
 - § 148. Ex parte communications
- 48A [C.J.S.](#) *Judges* (2014).
 - §§ 247-259. Bias or prejudice
 - § 247. —Generally
 - § 250. —Nature or character
 - § 252. — —Origin of bias or prejudice and against whom directed
 - § 255. —Particular applications of rule
 - § 259. — —Contempt proceedings
- 15 [Am Jur Pleading and Practice Forms](#) *Judges* (2005).
 - Disqualification to act in a particular case (§§ 2 to 62)

§ 13. Bias and prejudice. Introductory comments

- 50 [Am Jur Proof of Facts 3d](#) 449, *Disqualification of Trial Judge for Cause* (1999).
 - § 12. Discretionary grounds for disqualification
 - § 13. —Personal bias or prejudice
 - § 14. —Appearance of bias
 - § 14.5 —Stray remarks
 - § 15. —Animosity toward counsel
 - § 16. —Extrajudicial Source Rule

- Charles G. Geyh et al., [Judicial Conduct and Ethics](#), 5th ed. (2015).
 - Chapter 4. Disqualification
 - § 4.05. Disqualification When A Judge's Impartiality Might Reasonably Be Questioned
 - § 4.06. Disqualification for Personal Bias or Prejudice
 - § 4.07. Real and Reasonably Perceived Partiality: Recurring Scenarios
 - § 4.08. Contextual Limits on Real and Reasonably Perceived Partiality: The Extrajudicial Source Rule
 - § 4.09. Acts Calculated to Create Real or Perceived Partiality

- 1 Wesley Horton and Kimberly A. Knox, [Connecticut Practice Series: Superior Court Civil Rules](#). (2016-2017 ed.).
 - Authors' Comments* following Rule 2.11, pp. 183-192.

- Richard E. Flamm, [Judicial Disqualification: Recusal and Disqualification of Judges](#), 2nd ed (2007).
 - Part II – Disqualification for bias or its appearance
 - Ch. 3 Bias
 - Ch. 4 The extra-judicial source rule
 - Ch. 5 An appearance of bias
 - Part III – Interest and relationship
 - Ch. 6 Interest

- David M. Rothman, [California Judicial Conduct Handbook](#), 2nd ed. (1999).
 - Chapter 7: Disqualification
 - Affidavits of prejudice
 - § 7.10. Preemptory challenges
 - § 7.11. Challenges for cause
 - § 7.12. Improper judicial reactions
 - § 7.13. Limits on powers of disqualified judge
 - §§ 7.30 – 7.63. Common disqualification problems
 - § 7.55. Persons against whom judge is biased

TEXTS & TREATISES:

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Section 3: Waiver of Disqualification

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic sources relating to the waiver of disqualification

DEFINITION:

- **Waiver:** "is the intentional relinquishment of a known right. It is not necessary that a waiver be made in express terms. It may be inferred from the declarations and conduct of the party if it is reasonable to do so." [Cutlip v. Connecticut Motor Vehicles Commissioner](#), 168 Conn. 94, 96, 357 A.2d 918 (1975).
- "The failure to raise a claim of disqualification with reasonable promptness after learning the ground for such a claim ordinarily constitutes a waiver thereof." [Henderson v. Department Of Motor Vehicles](#), 202 Conn. 453, 462, 521 A.2d 1040 (1987).
- "When any judge or family support magistrate is disqualified to act in any proceeding before him, he may act if the parties thereto consent in open court." Conn. Gen. Stat. § [51-39](#)(c) (2017).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017).
Chapter [872](#). Judges
§ [51-39](#). Disqualification by relationship or interest. Judge or family support magistrate may act with consent of parties.

Chapter [882](#). Superior Court
§ [51-183c](#). Same judge not to preside at new trial

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- [Conn. Practice Book](#) (2017).
§ [1-22](#). Disqualification of judicial authority
§ [1-23](#). Motion for disqualification of judicial authority

CODE OF JUDICIAL CONDUCT:

- [Conn. Practice Book](#) (2017).
[Canon 2](#). A Judge Shall Perform the Duties of Judicial Office Impartially, Competently, and Diligently
[Rule 2.11](#) Disqualification

FORMS:

- 15 [Am Jur Pleading and Practice Forms](#) Judges (2016).
Disqualification to act in a particular case (§§ 2 to 63)
Waiver of disqualification

§ 62. Notice—Waiver of judge’s disqualification
§ 63. Stipulation—Waiver of judge’s disqualification

WEST KEY NUMBERS:

- *Judges* # 39-56. Disqualification to act
52. Waiver of disqualification or objections
- *Appeal and Error* # 185(3). Disqualification of judge
- *Judgment* # 9.
- *Venue* # 49.

DIGESTS:

- ALR Digest: *Judges* §§ 52-54
- Donald H. Dowling, Digest of Connecticut decisions (1990).
Judges § 2. Disqualification

CASES:

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- [Weyher v. Weyher](#), 164 Conn. App. 734, 748-750, 138 A.3d 969 (2016). “The defendant does not claim that he raised the issue of judicial bias at any time during the course of the proceedings. He could have requested that the judge recuse herself. ‘Claims alleging judicial bias should be raised at trial by a motion for disqualification or the claim will be deemed to be waived.... A party’s failure to raise a claim of disqualification at trial has been characterized as the functional equivalent of consenting to the judge’s presence at trial.’ (Citation omitted; internal quotation marks omitted.) *Wendt v. Wendt*, 59 Conn.App. 656, 692, 757 A.2d 1225, cert. denied, 255 Conn. 918, 763 A.2d 1044 (2000).

“Instead, the defendant waited until after the court rendered its decision on his motion. ‘Our Supreme Court has criticized the practice whereby an attorney, cognizant of circumstances giving rise to an objection before or during trial, waits until after an unfavorable judgment to raise the issue. We have made it clear that we will not permit parties to anticipate a favorable decision, reserving a right to impeach it or set it aside if it happens to be against them, for a cause which was well known to them before or during the trial.’ (Internal quotation marks omitted.) *Id.*, at 693, 757 A.2d 1225.

“Nevertheless, we will address the defendant’s claim given the grave nature of his accusation. ‘Because an accusation of judicial bias or prejudice strikes at the very core of judicial integrity and tends to undermine public confidence in the established judiciary ... we ... have reviewed unpreserved claims of judicial bias under the plain error doctrine.... Plain error exists only in truly extraordinary situations where the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings.’ (Citations omitted; internal quotation marks omitted.)

Doody v. Doody, 99 Conn.App. 512, 523, 914 A.2d 1058 (2007).”

- [Tate v. Safeco Insurance Company of Illinois et al.](#), 157 Conn. App. 432, 452, 116 A. 3d 386 (2015). “Having reviewed the procedural posture of the case, we conclude that the plaintiff's claim of judicial bias was not properly preserved because she failed to move to disqualify the judge at any time during the trial court proceedings in accordance with Practice Book § 1-23. See *Lynch v. Lynch*, 153 Conn. App. 208, 248, 100 A.3d 968, (2014), cert. denied, 315 Conn. 923, 108 A.3d 1124 (2015). ‘Claims alleging judicial bias should be raised at trial by a motion for disqualification or the claim will be deemed to be waived.... A party's failure to raise a claim of disqualification at trial has been characterized as the functional equivalent of consenting to the judge's presence at trial.’ (Internal quotation marks omitted.) *Burns v. Quinnipiac University*, 120 Conn. App. 311, 316, 991 A.2d 666, cert. denied, 297 Conn. 906, 995 A.2d 634 (2010).”
- [Lynch v. Lynch](#), 153 Conn. App. 208, 248, 100 A. 3d 968 (2014) cert. denied, 136 S. Ct. 68 (2015). “...our review of the record demonstrates that he did not ‘preserve his claim of judicial bias in accordance with Practice Book § 1–23’ by moving to disqualify Judge Adelman at any time during the trial court proceedings. *Wiegand v. Wiegand*, supra, 129 Conn. App. at 533, 21 A.3d 489. ‘Nevertheless, because claims of judicial bias strike at the very core of judicial integrity and implicate the basic concepts of a fair trial, we will review the plaintiff's claim.’ *Id.*”
- [Villages, LLC v. Enfield Planning and Zoning Commission](#), 149 Conn. App. 448, 457-458, 89 A. 3d 405 (2014). “‘A claim of bias must be raised in a timely manner. The failure to raise a claim of disqualification with reasonable promptness *after learning of the ground* for such a claim ordinarily constitutes a waiver thereof.... One court has noted that a challenge to a judge for bias and prejudice must be made *at the first opportunity after discovery of the facts tending to prove disqualification*.... To hold otherwise would be to allow a litigant to pervert and abuse the right extended to him at the cost to the other party of unnecessary expense and labor and to the public of the unnecessary disruption of the conduct of the courts.... Moreover, we will not permit parties to anticipate a favorable decision, reserving a right to impeach it or set it aside if it happens to be against them, for a cause which was well known to them before or during the [hearing].’ (Citations omitted; emphasis

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added; internal quotation marks omitted.) Id. at 262–63, 967 A.2d 1199.”

- [In re Messiah S.](#), 138 Conn. App. 606, 625, 53 A. 3d 224 (2012). “No Practice Book § 1–23 motion could have been filed ten days before trial, because the circumstances giving rise to the respondent's motion to recuse had not yet occurred. The respondent's counsel orally asked the court to recuse itself during trial in response to the court's comments and rulings. We conclude on the basis of *Giordano v. Giordano*, 9 Conn. App. 641, 643, 520 A.2d 1290 (1987), that the respondent ‘seasonably asserted’ her claim of judicial bias during trial on the basis of events that were transpiring in court.”
- [Jaeger v. Connecticut Siting Council](#), 128 Conn. App. 243, 249, 17 A. 3d 484 (2011). “Rather than discussing the issue directly with Judge Cohn, the plaintiff elected to file a motion for disqualification after learning of the possible grounds for his disqualification. After the motion was transferred to the civil presiding judge, however, the plaintiff withdrew her motion voluntarily before the court could consider it. As a result, the plaintiff, in effect, failed to raise a claim of disqualification because the withdrawal resulted in the claim being unpreserved. See *Senk v. Senk*, supra, 115 Conn. App. at 515, 973 A.2d 131. Accordingly, under the facts of the present case, we conclude that the plaintiff waived any claim of judicial disqualification by her voluntary actions, which prevented the court from conducting any type of hearing on the issue.
- [State v. Ortiz](#), 83 Conn. App. 142, 154, 848 A.2d 1246 (2004). “We agree with the state that the effect of the verbal exchange between the defendant and the judge, coupled with the defendant's conduct in failing to make a motion to disqualify him, was a waiver of the defendant's right to disqualify the judge on grounds of bias or lack of impartiality. Under such circumstances, to permit the defendant to fail to make an objection to the judge hearing the case at trial and thereafter to make his first such objection on appeal, after the outcome of the case has been determined and the sentence imposed, would not only be an ambush of the trial judge, but would impermissibly permit a defendant to manipulate the judicial process. See *State v. DeGennaro*, 147 Conn. 296, 303, 160 A.2d 480 (defendants waived disqualification of trial judge by consenting in open court to judge), cert. denied, 364 U.S. 873, 81 S.Ct. 116, 5 L.Ed.2d 95 (1960).”
- [L & R Realty v. Connecticut National Bank](#), 53 Conn. App.

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524, 544, 732 A.2d 181 (1999). "Here, the LeFoll parties twice informed the trial judge that they had no objection to his presiding at trial. The parties were represented by counsel and LeFoll, who is himself an attorney, was present in the courtroom when the trial judge made his disclosure. Once they waive their right to disqualify the trial judge, the parties are bound by their waiver. See General Statutes § 51-39. The trial judge, therefore, did not improperly fail to recuse himself."

- [Timm v. Timm](#), 195 Conn. 202, 204, 487 A.2d 191 (1985) "In the present case, although the parties did not expressly agree that the trial referee could preside, there is no evidence that defense counsel objected to these conferences or sought his disqualification. The issue was raised for the first time on appeal. The defendant attempts to justify his failure to refuse to participate in the settlement conferences, and his failure to file a motion for mistrial on the ground that any demurrer would have placed him in the untenable position of risking the court's denial of the motion and incurring the animosity or displeasure of the court. There is, however, neither a claim nor the slightest indication that the trial referee insisted on these conferences or that he might have become belligerent or angry if either party had objected to them. The record is devoid of any suggestion of actual impropriety or bias on the part of the referee. The conduct of the defendant in this case, in failing to raise the issue of the referee's disqualification either before or during the trial, can be construed as the functional equivalent of 'consent in open court' to Judge Cramer's presiding over the trial. See General Statutes § 51-39(c); *State v. Kohlfuss*, 152 Conn. 625, 631, 211 A.2d 143 (1965)."
- [State v. DeGennaro](#), 147 Conn. 296, 303, 160 A.2d 480 (1960). "The defendants make the further claim that they could not 'waive' the disqualification because waiver is the intentional relinquishment of a known right and it does not affirmatively appear that they or their counsel knew of the disqualification statute (§51-41)[now §51-183c]. This claim is apparently taken from similar language in the opinion in *State v. Hartley*, [75 Conn. 104, 109, 52 A. 615 (1902)] supra. Section 51-39, however, refers to consent to have the judge hear the case, not waiver of his disqualification to hear the case. That the defendants went far beyond mere consent is not open to question. Whatever may have been the situation when, as at the time of the trial of *State v. Hartley*, the consent statute (Rev. 1888, 841) required the consent to be given in writing, we cannot engraft onto the present consent statute a requirement of knowledge of the disqualification statute which the language of the consent statute does

not impose.”

ENCYCLOPEDIAS:

- 46 [Am. Jur. 2d Judges](#) (2006).
Waiver and estoppel
 - § 203. Generally
 - § 204. Statutory availability of waiver and estoppel
 - § 205. Knowledge of basis for disqualification
 - § 206. Effect of waiver on other parties
 - § 207. Express and implied waiver
 - § 208. Failure to make timely objection as effecting waiver or estoppel
 - § 211. Consent or other actions of parties as effecting waiver or estoppel
 - § 213. Particular acts not resulting in waiver
- 48A [C.J.S. Judges](#) (2014).
§§ 236-244. Waiver of disqualification
 - § 237. —Grounds for disqualification under which waiver may be allowed
 - § 239. —Acts constituting waiver
 - § 240. — — Participation in proceedings
 - § 243. — — Consent
- 15 [Am Jur Pleading and Practice Forms Judges](#) (2016).
§ 61. Waiver of disqualification. Introductory comments
- 50 [Am Jur Proof of Facts 3d](#) 449, *Disqualification of Trial Judge for Cause* (1999).
§ 17. Exclusions
Remittal of disqualification

TREATISES:

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- Richard E. Flamm, [Judicial Disqualification: Recusal and Disqualification of Judges](#), 2nd ed (2007).
Chapter 16. Adverse Rulings or Comments
 - § 16.8. WaiverChapter 20. Factors Militating Against Disqualification
 - § 20.4 Consent
- David M. Rothman, [California Judicial Conduct Handbook](#), 2nd ed. (1999).
Chapter 7: Disqualification
Waiver of disqualification
 - § 7.25. Judge may not induce waiver
 - § 7.26. Form and content of the written waiver of disqualification
 - § 7.27. Effect of change in disqualifying circumstances
- Charles G. Geyh et al., [Judicial Conduct and Ethics](#), 5th ed. (2013).
Chapter 4. Disqualification.
 - § 4.18. Waiver and Remittal of Disqualification

Table 3: Unreported Connecticut Decisions on Recusal

| Unreported Connecticut Decisions on Recusal | |
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| <p><u>Pritsker v. Keating et al.</u>, Superior Court, Judicial District of Stamford–Norwalk No. CV145014277S (May 26, 2016) Conn. Super. LEXIS 1176 (2016 WL 2016 3391452)</p> | <p>“It is axiomatic that the burden of establishing a record that a judicial impropriety has occurred which demonstrates or gives the appearance of bias or partiality so as to require recusal rests with the party who claims the occurrence of such an impropriety. <i>State v. Santangelo</i>, 205 Conn. 578, 584, 534 A.2d 1175 (1987); accord <i>Tracey v. Tracey</i>, 97 Conn.App. 278, 285, 903 A.2d 679 (2006) (‘it is the moving party’s burden to prove that the conduct in question gives rise to a reasonable appearance of impropriety’). The burden thus rests with the plaintiff in this appeal to demonstrate that the trial judge improperly denied her recusal request. In <i>St. Germain v. Labrie</i>, 108 Conn.App. 587, 595, 949 A.2d 518 (2008), the court held: The standard for determining whether a judge should recuse himself or herself pursuant to canon 3(c) is well established. The standard to be employed is an objective one, not the judge’s subjective view as to whether he or she can be fair and impartial in hearing the case...”</p> |
| <p><u>Johnson v. Warden</u>, Superior Court, Judicial District of Tolland at G.A. 19, No. CV094002796S (Mar. 18, 2015) (2015 Conn. Super. LEXIS 612) (2015 WL 1758653)</p> | <p>“Attorneys should be free to challenge in appropriate legal proceedings, a court’s perceived partiality without the court misconstruing such a challenge as an assault on the integrity of the court. Such challenges should, however, be made only when substantiated by the trial record.” (Internal quotation marks omitted.) <i>McKenna v. Delente</i>, 123 Conn.App. 137, 144–45, 1 A.3d 260 (2010); see also <i>Peatie v. Wal-Mart Stores, Inc.</i>, 112 Conn.App. 8, 25, 961 A.2d 1016 (2009).”</p> |
| <p><u>Rebeca M. v. Katz</u>, Superior Court, Judicial District of Fairfield, No. F04CP12009499A (Jan. 9, 2015) (2015 Conn. Super. LEXIS 83) (2015 WL 493536)</p> | <p>“Finally, it is worth repeating that the matter of a judge’s recusal is in the reasonable discretion of that judge, and the decision to recuse oneself is an intrinsic part of the judge’s judicial independence. <i>Consiglio v. Consiglio</i>, supra, 48 Conn. App. at 661–62. Although Practice Book § 1–22(b) permits a judge to refer a disqualification decision to another judge, the court declined to do so in this case. The petitioner has cited no authority for the proposition that such a referral is uniformly required, and in this instance it would only have served to further delay the expeditious resolution of the issues in this case.”</p> |

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| <p><u>In re Noelia M.</u>, Superior Court, Judicial District of Fairfield, No. F04CP12009499A (Jan. 9, 2015) (2015 Conn. Super. LEXIS 81) (2015 WL 493557)</p> | <p>"As the court stated in its ruling, no good cause was shown for the respondent mother's failure to file the motion at least before the start of trial. See <i>Olson v. Olson</i>, 71 Conn.App. 826, 830–31, 804 A.2d 851 (2002) (refusing to review claim of judicial bias in part because of party's failure to seek continuance to comply with Practice Book § 1–23). The respondent should not be allowed to 'judge shop' by filing a motion for recusal after failing on a particular motion or after gauging the chance of success. Nor will the court favorably entertain a dilatory motion to recuse after the commencement of trial which would cause a mistrial and frustrate the important interests of the children in receiving a timely adjudication of the termination petition."</p> |
| <p><u>Bennett v. Chenault</u>, Superior Court, Judicial District of New Haven at New Haven, No. CV09-5031085S (Jan 13, 2012) (2012 Conn. Super. LEXIS 114) (2012 WL 386480)</p> | <p>"...the court finds that the plaintiff has presented no evidence whatsoever of the existence of a conflict of interest, and that there would be no impropriety in her presiding over the trial of this matter, and that given the extremely tangential, non-blood relationship between the court and the defendant, no reasonable person would conclude that there was even an appearance of impropriety in her presiding over this trial."</p> |
| <p><u>Haus v. Associates in Family Health</u>, Superior Court, Judicial District of New Britain, No. CV01-0512495 (May 2, 2003) (2003 Conn. Super. LEXIS 1378) (2003 WL 21153497)</p> | <p>"In our view, it would not be reasonable for a person to question a judge's impartiality in a trial for a serious crime committed by a member of a particular racial group simply because the judge's close relative was the victim of a similar crime committed by a member of the same racial group. Such a perception, if held, would be based on speculation, and not on any reasonable basis."</p> |
| <p><u>Hayes v. Yale-New Haven</u>, Superior Court, Judicial District of New Haven at New Haven, No. CV 96 0393656S (Jun. 26, 2002) (2002 Conn. Super. LEXIS</p> | <p>"As a matter of law, the plaintiff has not alleged facts that would support disqualification under General Statutes § 51-39 because the plaintiff has not and cannot allege that the trial judge had a blood relationship to any party to the case or a pecuniary interest in the outcome. At a hearing held before this court, the plaintiff produced no documentary evidence of any pecuniary interest in the outcome of the case by the trial judge, nor did the plaintiff raise any credible possibility of a pecuniary interest."</p> |

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| 2168) (2002 WL 1723938) | |
| <p><u>Raymond v. Freedom of Information Comm.</u>, Superior Court, Judicial District of New Britain at New Britain, No. CV98-0492641S (Jun. 6, 2002) (2002 WL 1446978)</p> | <p>"This court does not understand the applicability of this provision [Practice Book § 1-22(a)] to this case. The appellate court majority did not grant a new trial or reverse the judgment, even on the attorney's fees issue. Rather than order a new trial or reverse the judgment, the majority repeatedly stated that it was remanding the case for further articulation. There does not appear to be a reason to assign this case to a different judge."</p> |
| <p><u>Honan v. Dimyan</u>, Superior Court, Judicial District of Danbury at Danbury, No. CV00-0338202S (Nov. 6, 2001) (2001 Conn. Super. LEXIS 3215) (2001 WL 1479114)</p> | <p>"The proper procedure to disqualify a judge is set out in Practice Book § 1-23 which provides that '[a] motion to disqualify a judicial authority shall be in writing and shall be accompanied by an affidavit setting forth the facts relied upon to show the grounds for disqualification and a certificate of the counsel of record that the motion is made in good faith. The motion shall be filed no less than ten days before the time the case is called for trial or hearing, unless good cause is shown for failure to file within such time.' Further, '[t]he matter of a judge's recusal is in the reasonable discretion of that judge. . . . The decision to recuse oneself is an intrinsic part of the independence of a judge.' <i>Consiglio v. Consiglio</i>, 48 Conn. App. 654, 661-662 (1998). Therefore, the plaintiffs must follow the procedure outlined in Practice Book § 1-23 and make their motion to disqualify Judge Axelrod in front of him if and when he presides over any aspect of the present case. This court cannot and will not violate the independence of another Judge of the Superior Court by enjoining him from hearing this case."</p> |
| <p><u>Hackling v. Casbro Construction of Rhode Island</u>, Superior Court, Judicial District of New Haven at New Haven, No. 368552 (Feb. 28, 2000) (2000 Conn. Super. LEXIS 617) (2000 WL 278756)</p> | <p>"A motion to disqualify a judicial officer because of the claimed possibility of bias is a serious matter. If counsel makes such a motion, it is not asking too much to require that he or she follow the established rules that treat it as such.' <i>State v. Santangelo</i>, supra, 205 Conn. [578, 601], 534 A.2d 1175 (1987)]; see also <i>Weyel v. Catania</i>, 52 Conn. App. 292, 298, 728 A.2d 512, cert. denied, 248 Conn. 922, 733 A.2d 846 (1999). Here, the plaintiff's motion is not accompanied by the required affidavit or certificate.</p> <p>Second, the motion is untimely. Although the plaintiff was not required to comply with that portion of Practice Book § 1-23 that requires that a motion for recusal be 'filed no less than ten days before the time the case is called for trial or hearing' because 'good cause is shown for failure to file within such time,' such a motion still 'must be asserted seasonably or it will be deemed to have been waived.' <i>Cameron v. Cameron</i>, 187 Conn.</p> |

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| | <p>163, 168, 444 A.2d 915 (1982). 'The rationale for this rule is that parties cannot be allowed to anticipate a favorable decision, reserving a right to impeach it or set it aside if it happens to be against them, for a cause which was well known to them before or during the trial.' (Internal quotation marks omitted.) <i>Barca v. Barca</i>, 15 Conn. App. 604, 608, 546 A.2d 887, cert. denied, 209 Conn. 824, 552 A.2d 430 (1988). Where a party or his attorney is aware of what he considers grounds for recusal before judgment but waits until after judgment to move for recusal, the motion is untimely. <i>Jazlowiecki v. Cyr</i>, 4 Conn. App. 76, 78-79, 492 A.2d 516 (1985)."</p> |
| <p><u>Burton v. Dimyan</u>, Superior Court, Judicial District of Danbury at Danbury, No. CV94-0318006S (Jan. 28, 2000) (2000 Conn. Super. LEXIS 259) (2000 WL 175766)</p> | <p>"Although each case of alleged judicial impropriety must be evaluated on its own facts, the considerations that we have found decisive are similar to those articulated in cases in other jurisdictions. Some of the significant state court cases are reviewed in <i>In re Inquiry Concerning a Judge</i>, supra, 788 P.2d [716,] 722-23 [(1990)]. At least since the decision of the <i>United States Supreme Court in Liljeberg v. Health Services Acquisition Corp.</i>, supra, 486 U.S. [847,]860-61, [108 S. Ct. 2194, 100 L.Ed. 2d 855 (1988)] federal courts have ruled to the same effect. See, e.g., <i>United States v. Jordan</i>, supra, 49 F.3d [152,] 156-57 [(5th Cir. 1995)]."</p> |

Section 4: Disqualification of Probate Court Judge

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic sources relating to the disqualification of a probate court judge.

DEFINITIONS:

- “In this rule, ‘**judge**’ means probate judge, probate magistrate, and attorney probate referee.” [Probate Court Rules of Procedure §15.1](#) (2017).
- “When there is so near a relationship between any deceased person or any legatee, devisee, heir, spouse or creditor of such deceased person, and a judge of probate, as between husband and wife, parent and child, brothers and sisters, by nature or marriage, or when any such judge is interested in any matter brought to or pending in his court, he or she shall be disqualified to act as judge in relation to the estate of such deceased person or in hearing such matter; and he or she may decline to act as such judge in any matter if in his or her opinion it would be improper for him or her so to act. No judge of probate shall appoint as a fiduciary any corporation of which he or she is a director or salaried officer unless such corporation has been nominated as such fiduciary by a testator or trustor.” Conn. Gen. Stat. § [45a-22](#) (2017).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017).
Chapter 801. Probate Court: Administrative Provisions
§ [45a-22](#). Disqualification of judge and of corporation of which he is director or officer.
§ [45a-24](#). Validity of orders, judgments and decrees.
§ [45a-120](#). Citation of another judge.

PROBATE COURT RULES:

- [Probate Court Rules of Procedure](#) (2017).
[Rule 15](#). Disqualification of Judge.
§ 15.1. Applicability
§ 15.2. When disqualification of judge is required.
§ 15.3. Motion for disqualification of judge.
§ 15.4. Hearing and decision on motion for disqualification.
§ 15.5. Lawsuit or complaint against judge.
§ 15.6. Disclosure and waiver of disqualification.
§ 15.7. Judge to act for disqualified judge.
[Rule 33](#). Conservators.
§ 33.3(b). Appointment of temporary conservator without notice and hearing.

[Rule 40](#) . Children's Matters: General Provisions.
§ 40.4(b). Order for immediate temporary custody
without notice and hearing.

**CODE OF PROBATE
JUDICIAL
CONDUCT:**

**WEST KEY
NUMBERS:**

DIGESTS:

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Code of Probate Judicial Conduct](#) (2016).
[Canon 3](#) (E). Disqualification
- *Judges* # 39-56. Disqualification to act
- *Appeal and Error* # 185(3). Disqualification of judge
- ALR Digest: *Judges* §§ 39-56
- Donald H. Dowling, Digest of Connecticut decisions (1990).
Judges § 2. Disqualification
- [Kaplan v. Caputo](#), Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FSTCV126012648S (Dec. 22, 2014) (2014 WL 7739162) "The court recognizes that General Statutes § 45a-24 provides in relevant part: 'Every order, judgment or decree of a court of probate made by a judge who is disqualified shall be valid unless an appeal is taken as hereinafter specified. All orders, judgments and decrees of courts of probate, rendered after notice and from which no appeal is taken, shall be conclusive and shall be entitled to full faith, credit and validity and shall not be subject to collateral attack, except for fraud.' The parties do not dispute that neither the plaintiff nor the defendant appealed the subject decree of the Probate Court. However, the Probate Court's inclusion of the 'without prejudice' language in its decree deprives it of any preclusive effect on the plaintiff's present action."
- [Patterson v. Council on Probate Judicial Conduct](#), 215 Conn. 553, 566, 577 A.2d 701 (1990). "In finding the respondent guilty of misconduct, the council relied primarily upon Canon 3.3.01, requiring that '[a] judge should disqualify himself in a proceeding pending in his own court in which his impartiality might reasonably be questioned....' Since the canons are applicable only to judges, who are generally more qualified than lay persons to comprehend their import, we conclude that this canon provided sufficient notice to the respondent, a practicing attorney as well as a probate judge, that his participation in the purchase of 75 Cedar Street from the Williams estate was a ground upon which his impartiality in approving the final account of the executor of that estate might reasonably be questioned."
- [Council on Probate Judicial Conduct re Kinsella](#), 193 Conn. 180, 206, 476 A.2d 1041 (1984). "Courts of other jurisdictions have similarly held that a constitutional

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

prescription of legislative impeachment as the sole method of removing a judge from office does not bar the imposition of lesser sanctions, such as suspension or censure, by other bodies, pursuant to other procedures. See *In the Matter of Bonin*, 375 Mass. 680, 711-12, 378 N.E.2d 669 (1978); *Matter of Storie*, 574 S.W.2d 369, 373 (Mo.1978); *In re Mussman*, 112 N.H. 99, 101-102, 289 A.2d 403 (1972); *In re Hon. Charles E. Kading*, 70 Wis.2d 508, 522-23, 235 N.W.2d 409 (1975); cf. *Dostert v. Neeley*, 498 F.Supp. 1144, 1153 (S.D.W.Va.1980) (constitutional provision permitting temporary suspension of judge by supreme court of appeals not in conflict with constitutional provision for impeachment by legislature). For legislative courts such as the probate courts, 'the General Assembly has the power to make reasonable rules of administration, practice and procedure provided that they do not significantly interfere with the orderly operation of the court while it remains in existence as a court.' *Adams v. Rubinow*, supra, 157 Conn. 156-57, 251 A.2d 49."

ENCYCLOPEDIAS:

- 46 [Am. Jur. 2d](#) *Judges* (2006).
§§ 80-257. Disqualification to act in particular case
§ 137. Probate proceedings
- 48A [C.J.S.](#) *Judges* (2014).
§§ 228-341. Disqualification to act
§ 288. Probate matters
- 50 [Am Jur Proof of Facts 3d](#) 449, *Disqualification of Trial Judge for Cause* (1999).
§ 12. Discretionary grounds for disqualification
§ 13. —Personal bias or prejudice
§ 15. —Animosity towards counsel

TEXTS & TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Ralph H. Folsom and Gayle B. Wilhelm, [Probate Jurisdiction and Procedure in Connecticut 2d](#), (2017).
§ 1:15 Disqualification in particular proceedings
§ 1:15.50 Probate court rules of procedure on disqualifying judges
§ 1:16 Citation of substitute judges, Special assignments