



Judge C. Rene' Williams
Circuit Court

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Judge Irv Maze
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JUDICIAL ETHICS OPINION JE-131

FORMAL

July 8, 2022

The Judicial Ethics Committee was contacted by a District Judge who has been asked to recuse from the rape trial of a juvenile. The boy, who is 17 years of age, is not being tried as an adult so the trial will be in District Court. The case came for arraignment on July 21, 2021. After three agreed continuances, the juvenile, by counsel, has filed a new motion requesting an additional continuance. At a hearing held April 20, 2022, the Commonwealth objected to the new defense motion. Additionally, the defense filed a motion asking the Judge to disqualify himself. The stated concern of the boy's parents was an appearance of impropriety and overall concerns that the outcome, whatever it is, will be tainted by accusations of an unlevelled playing field.

Apparently, about 12 - 15 years ago, the boy's stepmother worked for the Judge while he was still practicing law. The Judge disclosed this relationship at the arraignment; yet, at the time, no one objected to having him sit on the case. The stepmother is an attorney and practices with the attorney who is defending the boy. Since the time of her former employment, the Judge has not seen her in any setting outside of court. The boy's mother is employed by the County Attorney. Because the mother is an employee of the County Attorney, the Commonwealth Attorney is handling the case. The father is a police officer, but he does not serve as a police officer in counties in which this Judge serves. To the best of his knowledge, the juvenile and the parents are unknown to the Judge except to the extent of their appearances in his court in this matter.

In addition to the concerns expressed above, defense counsel has stated that the stepmother is an anticipated witness. Yet, none of the parties asking the Judge to recuse allege actual bias. Instead, their concern is that because of the "local connections," the presiding judge should be someone who is not familiar with any of the parties.

The Commonwealth has not objected to the Judge presiding so apparently the prosecution does not share the parents' and the stepmother's concerns. When he submitted this question, the Judge informed the Committee that the alleged victim was also someone he did not know and with whom he had no prior relationship. Following the submission of the motion requesting recusal, the movants requested the Court to take the recusal issue under submission.

As the stepmother and the parents have filed a motion asking the Judge to recuse, the Judge has requested an opinion from the Judicial Ethics Committee as to whether his disqualification is required.

I. ABSENT SOME REASON TO DISQUALIFY PURSUANT TO THE NEW CODE OR OTHER LAW, A JUDGE HAS A RESPONSIBILITY TO DECIDE A CASE.

Except when required to recuse by the **New Code** or other law, a judge is expected to hear and decide matters assigned to the judge. **Canon 2, Rule 2.7.** The **COMMENT** Section to this rule says specifically:

Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

II. THE QUESTION OF THE JUDGE'S RECUSAL IS GOVERNED BY THE RECENT KENTUCKY SUPREME COURT CASE OF ABBOTT, INC. V. GUIRGUIS.

The recent Kentucky Supreme Court case of *Abbott, Inc. v. Guirguis*, 626 S.W.3d 475 (Ky. 2021), is controlling in this situation. As one of the parties has asked the Judge to recuse, all the parties must be given the opportunity, on the record, to give their reasons whether or not they want the Judge to sit. The standard of recusal the Judge is required to apply to himself is that of the reasonable, objective person knowing all the relevant facts and circumstances. If, after applying this test, the Judge believes he may continue to sit, he must place his reasoning in the record. If the case is appealed, and it appears if the boy is convicted the decision will be appealed, the Judge's decision not to recuse will be reviewed *de novo*.

As a general rule, under the **New Code**, the fact that the parents of a party have “local connections,” but are unknown to the Judge or not closely connected to the judge does not require a judge to disqualify. **Canon 2, Rule 2.11(A)(2) and (3)**. In this case, the fact that these parents have “local connections” cannot be news to anyone. If it is true now it was true as well at the time of the arraignment last year. Ultimately, however, the decision to continue to sit or recuse must be made by the judge as only he or she has the ability to fully assess all the factors relevant to the decision.

Please be aware that opinions issued by or on behalf of the Committee are restricted to the content and the scope of the Canons of Judicial Ethics and legal authority interpreting those Canons, and the fact situation on which an opinion is based may be affected by other laws or regulations. Persons contacting the Judicial Ethics Committee are strongly encouraged to seek counsel of their own choosing to determine any unintended legal consequences of any opinion given by the Committee or some of its members.

Additionally, all judges and judicial candidates need to know that they have the right to obtain review by the Kentucky Supreme Court of any formal opinion issued by the Judicial Ethics Committee on motion filed in compliance with SCR 4.130(4) and all formal and informal opinions issued by the Judicial Ethics Committee are subject to review by the Kentucky Supreme Court on its own motion at any time. SCR 4.130(4).

Very truly yours,

/S/ Irv Maze

Judge, Court of Appeals and Chair
The Ethics Committee of the
Kentucky Judiciary

Cc: The Honorable C. Rene’ Williams, Judge, Circuit Court
The Honorable Jeffrey Scott Lawless, Judge, District Court
Donald H. Combs, Esq. and Vice Chair
J. Stephen Smith, Esq.
Jean Collier, Esq. and Executive Secretary

