

Important Note: This document was prepared in June 2020 by the Chief Counsel of the NYS Advisory Committee on Judicial Ethics to summarize prior opinions. It reflects the Chief Counsel’s own understanding and analysis of prior opinions, and does not necessarily reflect the Committee’s views as expressed in its full, published opinions. The Committee has nonetheless authorized dissemination of this document as a starting point for research and to help judges decide when they should seek more tailored guidance from the Committee on their own specific circumstances.

CHART 1 - FORMER ADVERSARY IN CIVIL LITIGATION
*Obligations with respect to Former Adverse Party or Former Opposing Counsel
 Where Judge or Relative within Second Degree
 Was Formerly a Litigant (Litigation is Completely Concluded)*

Note 1: This chart focuses on duties with respect to a former *adverse* party or former *adverse* counsel, where judge or close relative was a party, and more specifically on whether or not there is a two-year “tail” at the end of the litigation. It does not address a judge’s duties with respect to *his/her own* former counsel (see e.g. Opinion 08-171/08-174 and others in that line), or a second-degree relative’s own former counsel (see e.g. Opinions 18-32; 16-66; 13-132).

Note 2: This chart excludes litigations where a judge is sued for performance of judicial duties.

Key: MD = Mandatory Disclosure; DQ = Disqualification

Opinion	Who was the Litigant?	Adverse Party or Counsel?	Digest or Quote	At End...	Party Opponent (dispute type)
20-63	judge	Party	A city court judge, who has recently negotiated a settlement of his/her lawsuits against the city, must fully disclose these prior litigations in matters where the city is a party for two years from the date the presiding judge signs the order of settlement. During this period, if any party appears without counsel in matters where the city is a party, the judge must disqualify him/herself. Opinions 18-139, 17-03, 14-11, 08-59, 04-66, 98-161, and 91-52 are modified or overruled consistent with this opinion.	2 years MD	Municipality (tax certiorari)
19-78	judge	Party	A judge need not disqualify when an attorney appearing before the judge was the judge’s election opponent in a now-concluded political campaign, during which the candidates challenged the sufficiency of each other’s nominating petitions.	No obligation.	Election opponent (petition dispute) Note: Relies on precedents allowing judges to preside in matters involving former election opponents.

Opinion	Who was the Litigant?	Adverse Party or Counsel?	Digest or Quote	At End...	Party Opponent (dispute type)
18-139	judge (petitioner)	Both	(1) Where a town justice has filed a tax certiorari case in Supreme Court challenging the valuation of his/her property in the town and the town attorney is defending the town in Supreme Court: (a) while the tax certiorari proceeding is pending, the judge is disqualified from all matters in which the town attorney appears or in which the town itself is a party; (b) this disqualification is subject to remittal consistent with prior opinions; (c) the disqualification ends when the tax certiorari case ends. ...	<i>As modified by 20-63: 2 years MD.</i>	Municipality (tax certiorari)
17-03	child (plaintiff)	Counsel	[private law firm representing child's non-city adversary] The Committee finds that the best approach here is to require disclosure in lieu of disqualification. Unless the judge believes he/she cannot be impartial, he/she need not recuse in the first instance when a private law firm representing a defendant in the child's lawsuit appears before him/her but must fully disclose the representation. If a party objects, the judge has full discretion about whether or not to recuse under the circumstances. If any party appears without counsel, the judge must disqualify him/herself. The requirement continues until the child's lawsuit ends (see Opinion 91-52).	<i>As modified by 20-63: 2 years MD.</i>	Counsel for private daycare provider (personal injury)

Opinion	Who was the Litigant?	Adverse Party or Counsel?	Digest or Quote	At End...	Party Opponent (dispute type)
16-88	judge (plaintiff)	Counsel	(1) A quasi-judicial official who is suing the county is disqualified, subject to remittal, when attorneys who are personally involved in defending the county appear before him/her in their private or official capacities. (2) For two years after the lawsuit concludes, disclosure is mandatory when these attorneys appear. (3) Neither disclosure nor recusal is required when other assistant county attorneys, or other attorneys from county-level government law offices appear, provided they are not personally involved in his/her lawsuit.	2 years MD	Counsel for county (property damage) Distinguishes opinions re lawsuits addressing the judge in his/her official capacity and lawsuits a part-time attorney judge brings in his/her professional capacity on behalf of a client.
16-84	judge	Counsel	(1) A judge need not disqualify him/herself when an attorney, who previously represented the judge's recent election opponent in an election law case, appears, provided the judge believes he/she can be fair and impartial.	No obligation.	Counsel for election opponent (election law case) Note: petition was withdrawn at an early stage.
16-57	sibling (defendant)	Party	[discrimination claims] "With respect to the former subordinate [of the judge's second-degree relative] who has already filed with the EEOC, and is expected to file a civil lawsuit shortly, the judge's impartiality can reasonably be questioned in matters involving that attorney (see 22 NYCRR 100.3[E][1]; cf. Opinion 10-168 [a judge whose spouse files a notice of claim against a municipality must exercise disqualification from the municipality's cases "from the date of filing until the judge's spouse's matter against the municipality is concluded"]). The judge must therefore disqualify him/herself from cases in which this attorney appears. Due to the volatile nature of the claims asserted against the judge's relative, the disqualification should continue for a period of two years following the conclusion of the legal proceedings."	2 years DQ	ADA (discrimination claims) Note: Expressly extends the DQ period (rather than switching to MD) based on "the volatile nature" of the claims.

Opinion	Who was the Litigant?	Adverse Party or Counsel?	Digest or Quote	At End...	Party Opponent (dispute type)
16-24	judge	Party	A judge must disclose the ongoing relationship when an attorney appearing before the judge is currently holding money in escrow for the judge. If the escrowed funds are released without controversy, the disclosure obligation ends when the escrow arrangement terminates. Should controversy concerning the escrowed funds arise, then the judge must disqualify in matters involving the attorney for the duration of the controversy and for two years thereafter.	2 years DQ	Fellow parent of child's college roommate (escrow dispute)
16-11	judge (defendant)	Party	A judge who is a defendant in a bank's foreclosure action in an individual and fiduciary capacity may nonetheless preside over an unrelated action in which a party has subpoenaed records from the bank, including a party's motions to quash the subpoena, provided the bank is not a party to the action before the judge but is only a stakeholder which has not appeared or taken a position regarding the subpoena. "Preliminarily, the Committee observes that the inquiring judge plans to disqualify him/herself from any cases in which the bank is a party during the pendency of the foreclosure proceeding (see Opinion 10-96 [suggesting disqualification subject to remittal]), but is apparently uncertain about his/her obligations afterward. Once the foreclosure proceeding is over, there should be mandatory disclosure for two years when the judge's former party-opponent (the bank) appears before the judge as a party, but with disqualification solely in the judge's discretion (see Opinions 10-168; 07-206)."	[2 years MD]* * BUT no obligation, even <i>during</i> the action, when bank appears as a mere stakeholder.	Bank (foreclosure proceeding)
15-08	judge	Counsel*	During the pendency of a judge's matrimonial action, and while any associated financial obligations continue between the judge and his/her spouse or former spouse, and for two years thereafter: (2) The judge is disqualified,	2 years DQ, followed by MD for unspecified period	Ex-Spouse (matrimonial action) Note: Here, the party opponent is <i>also</i> family (spouse), thus triggering other rules and

Opinion	Who was the Litigant?	Adverse Party or Counsel?	Digest or Quote	At End...	Party Opponent (dispute type)
			<p>subject to remittal, from cases involving attorneys who are or were personally involved in the judge's matrimonial proceeding. ... After this period has elapsed, the judge must continue to fully disclose the former attorney/client relationship with respect to attorneys who were personally involved in representing the judge or the judge's ex-spouse in the matrimonial action, but otherwise has no further obligation provided the judge can be fair and impartial.</p>		<p>principles, such as obligations with respect to a spouse's private law firm partners and associates and obligations with respect to a <i>relative's</i> former counsel.</p>
14-11	judge (plaintiff/petitioner)	Party	<p>A judge who has sued the Public Defender [in the PD's individual and official capacities] is disqualified, subject to remittal, in matters where the Public Defender personally appears, but may preside in matters where assistant public defenders subject to the Public Defender's supervision appear.</p> <p>"Similarly, the Committee concludes that the inquiring judge is disqualified, subject to remittal, when the Public Defender personally appears before the judge while the lawsuit is pending."</p>	As modified by 20-63: 2 years MD.	Public Defender (unspecified claims in PD's official and individual capacity)
11-34	child (claimant)	Both*	<p>[Ct of Claims] "Once the judge's close relative's civil claim is concluded, for a period of two years the judge must fully disclose that his/her relative filed the claim and the nature of the claim when the Assistant Attorney General in charge of defending that claim appears in unrelated matters (see Opinion 10-168)."</p> <p>"In addition, the judge must, for two years after the civil claim is concluded, fully disclose that his/her close relative [within second degree] commenced an action against a State Trooper in other, unrelated cases involving a State Trooper's negligent operation of an official vehicle (see Opinion 10-168).</p>	2 years MD (but where NYS is a party, only for troopers facing similar allegations)	<p>NYS (personal injury)</p> <p>Note: This involves unusual facts because a Court of Claims judge only hears cases involving NYS. Obligations for former party opponent (NYS) limited to troopers facing similar allegations (personal injury - negligent operation of motor vehicle).</p>

Opinion	Who was the Litigant?	Adverse Party or Counsel?	Digest or Quote	At End...	Party Opponent (dispute type)
10-209	judge (defendant)	Counsel	<i>[10 years ago] A judge need not disqualify him/herself when an attorney appearing before the judge previously represented a plaintiff in an action against the judge in the judge's individual capacity, as long as the judge believes he/she can be impartial.</i>	N/A - two years had already elapsed.	Counsel for <i>plaintiff (unspecified)</i>
10-168	spouse (petitioner)	Party	“For a period of two years after the matter is concluded, when the municipality appears before the judge, assuming the judge believes he/she can be fair and impartial, the judge must fully disclose that his/her spouse brought a personal injury claim against the municipality. If a party objects to the judge presiding, the judge must exercise his/her discretion in determining whether disqualification is warranted (see Opinion 07-206).”	2 years MD	Municipality (personal injury)
10-99	judge	Counsel	“This responds to your inquiry (10-99) asking when the attorney who represented your ex-spouse against you in a family court matter, or the attorney’s partners and associates who were not involved in your ex-spouse’s representation, may appear before you once the matter is concluded. ... If the attorney who represented your ex-spouse against you appears before you within two years after the matter was concluded, you are disqualified , subject to remittal (see Joint Opinion 08-171/08-174). After the two year period, if you can be fair and impartial, you must disclose the representation and, in the event of an objection to your continuing to preside, whether to exercise recusal is solely within your discretion (see id.).”	2 years DQ, followed by MD for unspecified period	Counsel for ex-spouse (family matter) Note: Here, the party opponent is also family (spouse), potentially triggering other rules and principles, such as obligations with respect to a spouse’s private law firm partners and associates.
08-59	judge (plaintiff)	Party	A judge who is a named plaintiff in a lawsuit against a municipality should, during the pendency of the lawsuit , disqualify him/herself from unrelated matters involving the municipality, subject to remittal.	As modified by 20-63: 2 years MD.	Municipality (declaratory judgment to enjoin change to ct facilities) Post-resolution duties not clearly addressed in original opinion.

Opinion	Who was the Litigant?	Adverse Party or Counsel?	Digest or Quote	At End...	Party Opponent (dispute type)
07-206	judge (plaintiff)	Party (insurer stepping into d's shoes)	A judge who presides in a civil court and is the plaintiff in a civil action against a defendant insured by a national insurance company that regularly appears in the judge's court is disqualified from presiding in all such cases during the pendency of the civil action, subject to remittal except when a party is self-represented. For a period of two years after the judge's civil action is concluded, the judge must disclose that the insurance company represented the defendant in the judge's civil action when the insurance company appears in the judge's court. If a party thereafter objects to the judge presiding, the judge must determine whether disqualification and recusal are warranted.	2 years MD	insurance company in shoes of defendant (personal injury)
07-35	child via judge (plaintiff)	Party	[9 years ago] Where a litigant before a judge was previously a defendant in a medical malpractice action brought by the judge on behalf of the judge's child, the judge need not disqualify him/herself unless the judge doubts his/her impartiality.	N/A - two years have already elapsed.	Doctor (medical malpractice)
04-84	N/A	Criminal Defendant	On the facts stated, a judge need not recuse himself/herself as a result of having previously provided a deposition involving the same party in a wholly unrelated matter, since disposed of.	N/A - judge was a fact witness in D's prior criminal case.	N/A - This seems factually akin to 20-25 (where judge's child is crime victim and judge is witness)
04-66	judge (plaintiff)	Party	A judge, who is a plaintiff in a small claims breach of contract pension action against a municipality, should recuse in all matters in which the municipality is a party during the pendency of the judge's action if such request is made by the municipality's attorney after disclosure.	As modified by 20-63: 2 years MD.	Municipality (small claims breach of contract pension action) Post-resolution duties not clearly addressed in original opinion.
99-78	Judge (plaintiff)	Party	Whether the judge, who is presiding over a custody case, must now disqualify him/herself where the respondent, during the pendency of	No obligation DURING the litigation on	Current Litigant (harassment/ threats to presiding judge)

Opinion	Who was the Litigant?	Adverse Party or Counsel?	Digest or Quote	At End...	Party Opponent (dispute type)
			the case, has allegedly criminally harassed the judge and the judge has filed a criminal complaint against the respondent, is a discretionary decision that rests with the conscience of the judge.	these facts.	Note: this is a judge-shopping / threat scenario, where a <i>current litigant</i> is harassing the judge, in an apparent attempt to influence the outcome of his/her case.
98-161	child via judge (plaintiff)	Counsel	Disclosure is not required where a medical malpractice action brought by the judge on behalf of the judge's infant child has been concluded and an attorney who represented a defendant in that action is now appearing before the judge.	<i>As modified by 20-63:</i> 2 years MD.	Counsel for doctor (medical malpractice)
91-52	child via judge (plaintiff)	Counsel	Disclosure should continue to be made until the disposition of the malpractice case.	<i>As modified by 20-63:</i> 2 years MD.	Counsel for doctor (medical malpractice) Note: 17-03 amends/clarifies duties <i>during</i> the litigation.
88-153	judge (plaintiff)	Insurance company	A judge must disclose to all parties his prior connection with the ... insurance carrier, and should seriously consider disqualifying himself if any party objects, unless the objection is frivolous or in bad faith. "The judge should disqualify himself in these matters for as long as the judge feels that he cannot be impartial. If and when the judge concludes that he would be impartial and considering all relevant factors, including but not limited to the length of time since the last representation (perhaps using the two year period...) the judge chooses not to disqualify himself, then he must reveal on the record his prior relationship with the attorneys and with the insurance carrier."	2 years MD.	Presumably, insurance company in shoes of defendant (personal injury) Note: 08-171/08-174 amends duties with respect to judge's own personal attorneys. Note: 20-63 vests the judge with discretion about what to do if there is an objection following disclosure.

CHART 2 - JUDGE'S RELATIVE AS CRIMINAL DEFENDANT
Obligations with respect to Former Defense Counsel or Prosecutor
Where Relative within Second Degree Was Formerly a Criminal Defendant (Completely Concluded)

Note 1: The Committee decided to apply the same standard for both the prosecutor and the defense counsel representing the judge's relative.

Note 2: Different rule if judge's child is *victim* (rather than defendant) and judge is a witness. See Opinion 20-25.

Opinion	Who was the Defendant?	Digest or Quote	At End...	Comment
16-123	second-degree relative (sibling)	A judge must continue to disclose that prosecutors presently appearing before the judge were personally involved in a proceeding involving the judge's second-degree relative's criminal conviction for a two-year period after entry of judgment on that proceeding notwithstanding the relative's death. If, after disclosure, a party objects to the judge presiding, the judge has discretion whether or not recusal is warranted. The judge need not disclose that his/her relative died but if this fact is disclosed, the cause of death need not be.	2 years MD	
14-60	first-degree relative (child/parent)	(1) A judge whose first-degree relative has been arraigned on criminal charges is disqualified, subject to remittal, when a prosecutor who is personally involved in the criminal case appears before the judge. This obligation persists until entry of judgment. For two years after entry of judgment, disclosure is mandated in lieu of disqualification when a prosecutor who was personally involved in the trial phase appears before the judge on unrelated matters. If, after disclosure, a party objects to the judge presiding, the judge has discretion whether to recuse after considering all relevant factors. After the two-year period ends, the judge is not ethically required to disclose or recuse when these attorneys appear, provided he/she can be fair and impartial. (2) The judge need not disclose or recuse when other prosecutors from the same office appear before the judge, provided they are not personally involved in the criminal case against the judge's relative and further provided the judge concludes he/she can be fair and impartial. This result does not change merely because the assistant district attorney appearing before the judge is subject to the supervision of a more senior prosecutor who is personally involved in prosecuting the judge's first-degree relative. (3) The same principles apply at each stage of the criminal proceedings: the judge is disqualified, subject to remittal, for all attorneys who are personally involved in that stage of the proceedings, until entry of judgment for that stage of the proceedings; and disclosure is mandatory for two years after entry of judgment when the attorneys involved in that phase appear before the judge.	2 years MD	

Opinion	Who was the Defendant?	Digest or Quote	At End...	Comment
14-51	second-degree relative	<p>(1) For two years after entry of judgment in the trial phase of a judge's second-degree relative's criminal proceedings, provided the judge determines he/she can be fair and impartial, disclosure is mandated in lieu of disqualification when any prosecutor or defender who was personally involved at the trial phase appears before the judge on unrelated matters. If, after disclosure, a party objects to the judge presiding, the judge has discretion whether to recuse after considering all relevant factors. After the two-year period ends, the judge is not ethically required to disclose or recuse when these attorneys appear, provided he/she can be fair and impartial. (2) The judge is disqualified, subject to remittal, when an attorney who is personally involved in handling the judge's relative's appeal of the conviction appears, until entry of judgment on the appeal. For two years after entry of judgment on the appeal, disclosure is mandated in lieu of disqualification for the specific attorneys involved. After the two-year period, the judge has no further obligation, provided he/she can be fair and impartial. (3) The judge need not disclose or recuse when the assistant public defender who was initially appointed to represent the judge's relative on appeal appears, as the attorney's involvement in the judge's relative's case was brief and preliminary in nature.</p>	2 years MD	
13-132	second-degree relative (sibling)	<p>(1) A judge whose sibling, grandparent, or grandchild is a criminal defendant need not advise the District Attorney of his/her relationship to the defendant and should not make any unnecessary, voluntary disclosure of the relationship while the litigation is pending. (2) When a private attorney who is currently representing the judge's sibling, grandparent, or grandchild appears before the judge, the judge is disqualified subject to remittal while the representation is ongoing. For the first two years after the representation is fully concluded, disclosure is mandatory when that attorney appears before the judge but disqualification is in the judge's sole discretion.</p>	2 years MD	

CHART 3 - JUDGE AS CRIMINAL DEFENDANT

Although the Committee has not occasion to address the same issues with respect to a former criminal prosecution of the judge, we thought it might be of interest to see the issues that have been addressed thus far.

Opinion	Nature of charges against judge	Digest or Quote	Comment
17-133	charges relating to regulatory scheme	(1) Where a judge is currently facing criminal charges in a neighboring county, arising from accusatory instruments issued by the specialized department or agency that oversees a comprehensive regulatory scheme, the judge may resume or continue to perform his/her judicial duties, except that he/she must not preside in cases involving (a) the department or agency that issued the accusatory instruments, (b) other alleged violations of the same comprehensive regulatory scheme, or (c) the District Attorney's office that is prosecuting him/her.	Note: The post-resolution obligations are expressly left open. See fn 3.
14-141	domestic violence charges	A judge who is currently a defendant in a criminal case involving domestic violence charges should not preside over other domestic violence cases during the pendency of his/her own case and, if convicted, during the term of any sentence that may be imposed. If the judge is acquitted or if the judge completes his/her sentence and/or probation, the judge may preside over other domestic violence cases provided the judge concludes he/she can be fair and impartial.	Note: Doesn't address the judge's obligation in unrelated cases where the prosecutor's office appears.
02-54	speeding & DWI charges	A judge who had been charged with speeding and driving while intoxicated and was acquitted after trial is not precluded from presiding over cases involving individuals charged with violating the same statutes.	Note: Doesn't address the judge's obligation in unrelated cases where the prosecutor's office appears.