

22.2 Recusal of Trial Judge

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A. Applicable Law

Due process requires the trial judge to be absolutely impartial. *See Williams v. Pennsylvania*, ___ U.S. ___, 136 S. Ct. 1899, 1909 (2016) (“Both the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself.”); *Caperton v. Massey Coal Co., Inc.*, 556 U.S. 868, 876 (2009) (“It is axiomatic that ‘[a] fair trial in a fair tribunal is a basic requirement of due process.’”) (citation omitted); *Hope v. Charlotte-Mecklenburg Bd. of Educ.*, 110 N.C. App. 599, 602 (1993) (“One of the essential elements of due process is a fair hearing by a fair tribunal. In order to provide a fair hearing, due process demands an impartial decision maker.”); *see also supra* § 22.1A, Impartiality: In General (discussing general obligation of impartiality). G.S. 15A-1223 and Canon 3 of the N.C. Code of Judicial Conduct both address the disqualification of a judge presiding over a criminal trial when a claim of partiality is raised.

Under G.S. 15A-1223(a), a judge may disqualify him or herself on his or her own motion. On motion of the State, or on the motion of the defendant, recusal is mandatory in a criminal case if the judge is:

- prejudiced against the moving party or in favor of the adverse party;
- closely related to the defendant by blood or marriage;
- for any other reason unable to perform the duties required of him or her in an impartial manner; or
- a witness for or against one of the parties in the case.

G.S. 15A-1223(b), (e).

Canon 3(C)(1)(a) of the N.C. Code of Judicial Conduct provides that on the motion of any party, a judge should disqualify himself or herself in a proceeding in which his or her impartiality may reasonably be questioned, including but not limited to instances where he or she has a personal bias or prejudice concerning a party. For other instances requiring disqualification, such as kinship or financial interest in the matter in controversy, *see* Canon 3(C)(1)(b)–(d).

B. Procedural Requirements

The motion to disqualify “must be in writing and must be accompanied by one or more affidavits setting forth facts relied upon to show the grounds for disqualification.” G.S. 15A-1223(c). The motion must be filed no less than five days before the time the case is called for trial unless good cause is shown for failure to file within that time period. G.S. 15A-1223(d).

C. Burden on Moving Party

When a party moves for recusal, that party has the burden “to demonstrate objectively that grounds for disqualification actually exist.” *State v. Scott*, 343 N.C. 313, 325 (1996) (citations omitted). A mere allegation of bias or prejudice is not enough to compel recusal. *State v. Moffitt*, 185 N.C. App. 308 (2007). The party must show that substantial evidence exists that the judge has such a personal bias, prejudice, or interest that he or she would be unable to rule impartially. *Scott*, 343 N.C. 325. “The bias, prejudice, or interest which requires a trial judge to be recused from a trial has reference to the personal disposition or mental attitude of the trial judge, either favorable or unfavorable, toward a party to the action before him.” *State v. Kennedy*, 110 N.C. App. 302, 305 (1993). If a reasonable person knowing all of the circumstances would have doubts about the judge’s ability to rule on the motion to recuse in an impartial manner, then the judge should either recuse himself or herself or refer the matter to another judge to consider the motion. *State v. Poole*, 305 N.C. 308, 320 (1982). If the allegations in the motion to recuse are such that findings of fact are required, the trial judge should not rule on the motion but should refer the matter to another judge for hearing. *N.C. Nat’l Bank v. Gillespie*, 291 N.C. 303 (1976) (citing *Ponder v. Davis*, 233 N.C. 699 (1951)).

D. Additional Resources

For a collection of cases and further discussion of this topic, including a discussion of actual vs. perceived partiality on the part of the trial judge, see Michael Crowell, [Recusal](#), ADMINISTRATION OF JUSTICE BULLETIN No. 2015/05 (UNC School of Government, Nov. 2015). For case summaries addressing recusal motions, see JOHN RUBIN & ALYSON A. GRINE, 1 NORTH CAROLINA DEFENDER MANUAL § 13.4C (Motion to Recuse Trial Judge) (2d ed. 2013).