

N.Y. Comp. Codes R. & Regs. tit. 22, § 100.3

**OFFICIAL COMPILATION OF CODES,
RULES AND REGULATIONS OF THE STATE
OF NEW
YORK
TITLE 22. JUDICIARY
SUBTITLE A. JUDICIAL ADMINISTRATION
CHAPTER I. STANDARDS AND
ADMINISTRATIVE POLICIES
SUBCHAPTER C. RULES OF THE CHIEF
ADMINISTRATOR OF THE COURTS
PART 100. JUDICIAL CONDUCT**
Text is current through April 15, 2006.

Section 100.3 A judge shall perform the duties of judicial office impartially and diligently.

(A) *Judicial duties in general.* The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

(B) *Adjudicative responsibilities.*

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(2) A judge shall require order and decorum in proceedings before the judge.

(3) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and

(a) *Ex parte* communications that are made for scheduling or administrative purposes and that do not affect a substantial right of any party are authorized, provided the judge reasonably believes that no party will gain a

control.

(4) A judge shall perform judicial duties without bias or prejudice against or in favor of any person. A judge in the performance of judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, and shall require staff, court officials and others subject to the judge's direction and control to refrain from such words or conduct.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, against parties, witnesses, counsel or others. This paragraph does not preclude legitimate advocacy when age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, or other similar factors are issues in the proceeding.

(6) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending proceeding, except:

procedural or tactical advantage as a result of the *ex parte* communication, and the judge, insofar as practical and appropriate, makes provision for prompt notification of other parties or their lawyers of the

N.Y. Comp. Codes R. & Regs. tit. 22, § 100.3

substance of the *ex parte* communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and a copy of such advice if the advice is given in writing and the substance of the advice if it is given orally, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge, with the consent of the parties, may confer separately with the parties and their lawyers on agreed-upon matters.

(e) A judge may initiate or consider any *ex parte* communications when authorized by law to do so.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not make any public comment about a pending or impending proceeding in any court within the United States or its territories. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This paragraph does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This paragraph does not apply to proceedings in which the judge is a litigant in a personal capacity.

(3) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of

(9) A judge shall not:

(a) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;

(b) with respect to cases, controversies or issues that are likely to come before the court, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

(C) *Administrative responsibilities.*

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair

N.Y. Comp. Codes R. & Regs. tit. 22, § 100.3

value of services rendered. A judge shall not appoint or vote for the appointment of any person as a member of the judge's staff or that of the court of which the judge is a member, or as an appointee in a judicial proceeding, who is a relative within the fourth degree of relationship of either the judge or the judge's spouse or the spouse of such a person. A judge shall refrain from recommending a relative within the fourth degree of relationship of either the judge or the judge's spouse or the spouse of such person for appointment or employment to another judge serving in the same court. A judge also shall comply with the requirements of [Part 8 of the Rules of the Chief Judge](#) (22 NYCRR Part 8) relating to the appointment of relatives of judges. Nothing in this paragraph shall prohibit appointment of the spouse of the town or village justice, or other member of such justice's household, as clerk of the town or village court in which such justice sits, provided that the justice obtains the prior approval of the Chief Administrator of the Courts, which may be given upon a showing of good cause.

(D) *Disciplinary responsibilities.*

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action.

(3) Acts of a judge in the discharge of disciplinary responsibilities are part of a judge's judicial duties.

(E) *Disqualification.*

(1) A judge shall disqualify himself or herself in

a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) (i) the judge has a personal bias or prejudice concerning a party; or (ii) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge knows that: (i) the judge served as a lawyer in the matter in controversy; or (ii) a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter; or (iii) the judge has been a material witness concerning it;

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other interest that could be substantially affected by the proceeding;

(d) the judge knows that the judge or the judge's spouse, or a person known by the judge to be within the sixth degree of relationship to either of them, or the spouse of such a person:

N.Y. Comp. Codes R. & Regs. tit. 22, § 100.3

- (i) is a party to the proceeding;
- (ii) is an officer, director or trustee of a party;
- (iii) has an interest that could be substantially affected by the proceeding;

(e) the judge knows that the judge or the judge's spouse, or a person known by the judge to be within the fourth degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding or is likely to be a material witness in the proceeding.

(f) The judge, while a judge or while a candidate for judicial office, has made a pledge or promise of conduct in office that is inconsistent with the impartial performance of the adjudicative duties of the office or has made a public statement not in the judge's adjudicative capacity that commits the judge with respect to:

- (i) an issue in the proceeding; or
- (ii) the parties or controversy in the proceeding.

(g) Notwithstanding the provisions of subparagraphs (c) and (d) of this section, if a judge would be disqualified because of the appearance or discovery, after the matter was assigned to the judge, that the judge individually or as a fiduciary, the judge's spouse, or a minor child residing in his or her household has an economic interest in a party to the proceeding, disqualification is not required if the judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

(F) *Remittal of disqualification.* A judge disqualified by the terms of subdivision (E), except subparagraph (1)(a)(i), subparagraph (1)(b)(i) or (iii) or subparagraph (1)(d)(i) of this section, may disclose on the record the basis of the judge's disqualification. If, following such disclosure of any basis for disqualification, the parties who have appeared and not defaulted and their lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge believes that he or she will be impartial and is willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Historical Note

Sec. filed Aug. 1, 1972; amd. filed Nov. 26, 1976; renum. 111.3, new added by renum. and amd. 33.3, filed Feb. 2, 1982; amds. filed: Nov. 15, 1984; July 14, 1986; June 21, 1988; July 13, 1989; Oct. 27, 1989; repealed, new filed Feb. 1, 1996; amds. filed: Feb. 21, 2006; March 6, 2006 eff. Feb. 28, 2006. Amended (C), (E).

<General Materials (GM) - References, Annotations, or Tables>

N.Y. Comp. Codes R. & Regs. tit. 22, § 100.3

RESEARCH REFERENCES AND PRACTICE AIDS:

28 [NY Jur 2d, Courts and Judges §§ 348](#) et seq, [411](#), [440](#), [443](#)

57 [NY Jur 2d, Evidence § 927](#)

58A [NY Jur 2d, Evidence and Witnesses §§ 924-928](#)

105 [NY Jur 2d, Trial § 375](#)

47 Am Jur 2d, Judges §20

[association or relation to attorney in case. 65 ALR4th 73](#)

Annotations:

[Judge's previous legal association with attorney connected to current case as warranting disqualification. 85 ALR4th 700](#)

[Interest of judge in an official or representative capacity, or relationship of judge to one who is a party in an official or representative capacity, as disqualification. 10 ALR2d 1307](#)

[Removal or discipline of state judge for neglect of, or failure to perform, judicial duties. 87 ALR4th 727](#)

[Disqualification of judge by state, in criminal case, for bias or prejudice. 68 ALR3d 509](#)

[Consorting with, or maintaining social relations with, criminal figure as ground for disciplinary action against judge. 15 ALR5th 923](#)

[Membership in fraternal or social club or order affected by a case as ground for disqualification of judge. 75 ALR3d 1021](#)

[Disqualification of judge for bias against counsel for litigant. 54 ALR5th 575](#)

[Disqualification of judge because of political](#)

N.Y. Comp. Codes R. & Regs. tit. 22, § 100.3

1. Validity

[N.E.2d 932, 780 N.Y.S.2d 106, 2 N.Y.3d 479](#)

CASE NOTES:

CASE NOTES:

State trial court judge failed to establish likelihood of success on claim that state code of judicial conduct section prohibiting ex parte communications "concerning a pending or impending proceeding" was unconstitutionally vague, as required to preliminarily enjoin enforcement of the code section; judge used his specific factual scenario to demonstrate what he saw as the vagueness of the language. [Connor v. New York State Com'n on Judicial Conduct, 2003, 260 F.Supp.2d 517](#)

On review of record, court concluded that record disclosed serious administrative failings in petitioner's handling of cases in issue, but no persistent or deliberate neglect of his judicial duties rising to level of misconduct. [Matter of Greenfield, 1990, 557 N.E.2d 1177, 558 N.Y.S.2d 881, 76 N.Y.2d 293](#)

CASE NOTES:

CASE NOTES:

State trial court judge failed to establish likelihood of success on claim that state judicial conduct code section requiring judge to disqualify himself when impartiality might be questioned was vague, as required to preliminarily enjoin enforcement of the code, although judge claimed that code section did not prohibit recusal for "spurious reasons"; "bias" and "prejudice" required no statutory definition to put judges on notice. [Connor v. New York State Com'n on Judicial Conduct, 2003, 260 F.Supp.2d 517](#)

Town justice who allowed attorney to accept guilty pleas, who allowed attorney to determine amount of fines to be paid by defendants, who allowed attorney to enter disposition of cases on official court records, and who made deceptive responses to Administrative Law Judge's inquiry into allegation of improper delegation of judicial duties violates 22 NYCRR §100.3(a)(4) re according party right to be heard and avoiding ex parte communications. [Matter of Greenfeld, 1988, 521 N.E.2d 768, 526 N.Y.S.2d 810, 71 N.Y.2d 389](#)

2. Generally

CASE NOTES:

CASE NOTES:

Indictment charging judge with receiving reward for official misconduct in second degree was insufficient, where judge's duty as public servant was defined solely by reference to Rules of Judicial Conduct. [People v. Garson \(2 Dept. 2005\) 793 N.Y.S.2d 539, 17 A.D.3d 695, leave to appeal granted 834 N.E.2d 1266, 801 N.Y.S.2d 256, 5 N.Y.3d 762](#)

Removal of town court justice was warranted as a sanction for conduct which included converting escrow funds and retaliating against district attorney who made complaint against justice. [In re Cerbone, 2004, 812](#)

N.Y. Comp. Codes R. & Regs. tit. 22, § 100.3

CASE NOTES:

Absent an express violation of statute providing for disqualification of judge by reason of interest or consanguinity, the decision on a recusal motion based upon alleged bias and prejudice is generally a matter of the court's personal conscience and discretion. [Chang v. SDI Intern. Inc. \(2 Dept. 2005\) 792 N.Y.S.2d 92, 15 A.D.3d 520](#)

CASE NOTES:

Before an appearance of impropriety can be imputed or a conflict created, some other factor needs to be present that creates an interest that could be substantially affected by the outcome of the proceeding. [Matter of Emory CC \(3 Dept. 1993\) 606 N.Y.S.2d 99, 199 A.D.2d 932](#), leave to appeal dismissed [634 N.E.2d 600, 612 N.Y.S.2d 104, 83 N.Y.2d 837](#)

CASE NOTES:

Presence of a factor that creates an interest that could be substantially affected, and any action required thereby, are decisions best left to the trial judge's discretion. [Matter of Emory CC \(3 Dept. 1993\) 606 N.Y.S.2d 99, 199 A.D.2d 932](#), leave to appeal dismissed [634 N.E.2d 600, 612 N.Y.S.2d 104, 83 N.Y.2d 837](#)

CASE NOTES:

Judge has an obligation to deny insufficient recusal motions and should not recuse himself in the absence of a valid legal reason. [People v. Diaz, 1986, 498 N.Y.S.2d 698, 130 Misc.2d 1024](#)

3. Professional competence

CASE NOTES:

Judge's removal from office as sanction for misconduct was warranted, where she filed late, incomplete, and false quarterly reports and maintained a persistent backlog, with some delays of longer than two years, despite repeated administrative efforts to assist her; judge's conduct demonstrated that she was either unwilling or unable to discharge her judicial duties. [In re Washington, 2003, 800 N.E.2d 348, 768 N.Y.S.2d 175, 100 N.Y.2d 873](#)

CASE NOTES:

Town court justice's neglect of more than 100 cases for a period of over eight months in spite of repeated reminders from court personnel, the town board, and state auditors, was willful violation of rule governing judicial conduct requiring judges to perform their duties impartially and diligently. [In re Assini, 1999, 720 N.E.2d 882, 698 N.Y.S.2d 605, 94 N.Y.2d 26](#)

CASE NOTES:

City Court judge who improperly committed defendants to jail without bail was censured rather than removed from office. [Matter of LaBelle, 1992, 591 N.E.2d 1156, 582 N.Y.S.2d 970, 79 N.Y.2d 350](#)

N.Y. Comp. Codes R. & Regs. tit. 22, § 100.3

CASE NOTES:

Reviewing confirmed charges, Court of Appeals agreed with Commission that petitioner's continuance in office of Town Court Justice would pose threat to proper administration of justice; her conduct displayed lack of basic qualities of fairness, impartiality and self-restraint. [Matter of Tyler, 1990, 553 N.E.2d 1316, 554 N.Y.S.2d 806, 75 N.Y.2d 525](#), reargument denied [559 N.E.2d 681, 559 N.Y.S.2d 987, 76 N.Y.2d 773](#)

4. Partisan interests

CASE NOTES:

Conduct by judge in ex parte communication conveying the impression that his rulings will be based on his allegiance and loyalty to former political leader jeopardizes the public confidence in the integrity and impartiality of the judiciary and warrants removal from office. [Matter of Levine, 1989, 545 N.E.2d 1205, 546 N.Y.S.2d 817, 74 N.Y.2d 294](#)

CASE NOTES:

Motion court was not statutorily disqualified from deciding motion to dismiss action to annul foreclosure sale based on its ownership of stock in mortgagee's parent corporation; court did not have stock in the mortgagee, and no motion to recuse was made based on court's ownership of stock in parent or any other corporation. [DeRosa v. Chase Manhattan Mortg. Corp. \(1 Dept. 2004\) 782 N.Y.S.2d 5, 10 A.D.3d 317](#)

CASE NOTES:

Error, if any, on part of judge, who had testified for prosecution in its case-in-chief to establish defendant's prior conviction, to recuse himself from deciding defendant's subsequent motion to vacate judgment of conviction, to avoid any appearance of partiality, did not warrant reversal and a new trial. [People v. Saunders \(3 Dept. 2003\) 753 N.Y.S.2d 620, 301 A.D.2d 869](#), leave to appeal denied [793 N.E.2d 422, 763 N.Y.S.2d 8, 100 N.Y.2d 542](#)

CASE NOTES:

Fact that trial judge and his wife had owned stock in defendant corporation did not require judge's disqualification in contractor's action to recover additional compensation for extra work performed under construction contract, where judge and his wife had divested themselves of such stock immediately upon being informed by contractor of the apparent conflict. [Barsotti's, Inc. v. Consolidated Edison Co. of New York, Inc. \(1 Dept. 1997\) 666 N.Y.S.2d 182, 245 A.D.2d 178](#)

5. Order and decorum

CASE NOTES:

Finding that soon-to-retire judge engaged in inappropriate and demeaning conduct toward his secretary, warranting censure, was supported by evidence that he made numerous comments to her of sexual nature, repeatedly touched her without her invitation or consent and, on one occasion, pulled her onto his lap and kissed her mouth without her invitation or consent. [In re Shaw, 2001, 747 N.E.2d 1272, 724 N.Y.S.2d 672, 96 N.Y.2d 7](#)

N.Y. Comp. Codes R. & Regs. tit. 22, § 100.3

Requirement that male attorney wear necktie to court while not requiring same of female attorneys was not unconstitutional sex discrimination and was permissible pursuant to 22 NYCRR §100.3(a)(2) requiring that judge maintain order and decorum in court, where court could reasonably conclude that, because of fashion differences, a male attorney appearing without necktie lacked proper decorum whereas female attorney not wearing necktie was not subject to that criticism. [Devine v. Lonschein, 1985, 621 F.Supp. 894](#), affirmed [800 F.2d 1127](#)

CASE NOTES:

Town justice's misconduct on and off the bench--including outspoken insensitivity about charges of domestic violence and sexual abuse, uttering profane and disparaging remarks about a complainant who was a former client of his private law practice, and attempting to instigate a criminal complaint to benefit a friend and client--constituted a serious abuse of judicial authority and demonstrated a pattern of serious disregard for the standards of judicial conduct; and, as such, warranted a sanction of removal from office. [In re Romano, 1999, 712 N.E.2d 1216, 690 N.Y.S.2d 849, 93 N.Y.2d 161](#)

6. Comportment

CASE NOTES:

Reviewing confirmed charges, Court of Appeals agreed with Commission that petitioner's continuance in office of Town Court Justice would pose threat to proper administration of justice; her conduct displayed lack of basic qualities of fairness, impartiality and self-restraint. [Matter of Tyler, 1990, 553 N.E.2d 1316, 554 N.Y.S.2d](#)

CASE NOTES:

[806, 75 N.Y.2d 525](#), reargument denied [559 N.E.2d 681, 559 N.Y.S.2d 987, 76 N.Y.2d 773](#)

7. Ex Parte communications

CASE NOTES:

City Court judge who improperly committed defendants to jail without bail was censured rather than removed from office. [Matter of LaBelle, 1992, 591 N.E.2d 1156, 582 N.Y.S.2d 970, 79 N.Y.2d 350](#)

CASE NOTES:

On review of record, court concluded that record disclosed serious administrative failings in petitioner's handling of cases in issue, but no persistent or deliberate neglect of his judicial duties rising to level of misconduct. [Matter of Greenfield, 1990, 557 N.E.2d 1177, 558 N.Y.S.2d 881, 76 N.Y.2d 293](#)

CASE NOTES:

Reviewing confirmed charges, Court of Appeals agreed with Commission that petitioner's continuance in office of Town Court Justice would pose threat to proper administration of justice; her conduct displayed lack of basic qualities of fairness, impartiality and self-restraint. [Matter of Tyler, 1990, 553 N.E.2d 1316, 554 N.Y.S.2d](#) [806, 75 N.Y.2d 525](#), reargument denied [559 N.E.2d 681, 559 N.Y.S.2d 987, 76 N.Y.2d 773](#)

N.Y. Comp. Codes R. & Regs. tit. 22, § 100.3

CASE NOTES:

Town Court Justice, who routinely sought out and interviewed witnesses outside of court and made judgments based on their unsworn ex parte communications, who berated teen-age boy whom he believed to be carrying open container outside restaurant and used intemperate language and threatened harsh punishment if boy appeared in his court, who on one occasion arraigned and accepted guilty plea from and sentenced person appearing before him as complaining witness in unrelated manner although no accusatory instrument was filed and person was never informed of charges, who failed to disqualify himself from hearing two criminal cases even though he was witness to event underlying charges, and who accepted guilty plea from teen-ager based on teen-ager's statement which implicated third person in alleged crime which Town Justice had heard about through private conversation, violated 22 NYCRR §100.3(a)(4) re avoiding ex parte communications. [Matter of VonderHeide, 1988, 532 N.E.2d 1252, 536 N.Y.S.2d 24, 72 N.Y.2d 658](#)

CASE NOTES:

Town Court Justice, who routinely sought out and interviewed witnesses outside of court and made judgments based on their unsworn ex parte communications, who berated teen-age boy whom he believed to be carrying open container outside restaurant and used intemperate language and threatened harsh punishment if boy appeared in his court, who on one occasion arraigned and accepted guilty plea from and sentenced person appearing before him as complaining witness in unrelated manner although no accusatory instrument was filed and person was never informed of charges, who failed to disqualify himself from hearing two criminal cases even though he was witness to event underlying charges, and who accepted guilty plea from teen-ager based on teen-ager's statement which implicated third person in alleged crime which Town

Justice had heard about through private conversation, violated 22 NYCRR §100.3(c)(1)(i) re disqualifying oneself in proceedings where impartiality may be questioned because of personal knowledge of disputed facts. [Matter of VonderHeide, 1988, 532 N.E.2d 1252, 536 N.Y.S.2d 24, 72 N.Y.2d 658](#)

CASE NOTES:

Judge's alleged violation of Rules of Chief Administrator prohibiting unauthorized ex parte communications and lending the prestige of judicial office to advance private interests could not satisfy violation of duty element of receiving reward for official misconduct in the second degree; even if such rules were binding on judge via constitutional command, such rules were not designed as a basis for criminal prosecution. [People v. Garson, 2004, 775 N.Y.S.2d 827, 4 Misc.3d 258](#), affirmed [793 N.Y.S.2d 539, 17 A.D.3d 695](#), leave to appeal granted [834 N.E.2d 1266, 801 N.Y.S.2d 256, 5 N.Y.3d 762](#)

CASE NOTES:

There is a general presumption that ex parte applications for judicial subpoenas duces tecum are improper. [People v. Owens, 1999, 701 N.Y.S.2d 602, 182 Misc.2d 794](#)

8. Amicus briefs

CASE NOTES:

N.Y. Comp. Codes R. & Regs. tit. 22, § 100.3

Non-profit education organization and city bar association made showing sufficient for Supreme Court to sign orders to show cause with respect to their motions for amicus curiae status in state senator's Article 78 proceeding alleging that proposed reorganization of
CASE NOTES:

In deciding whether to grant amicus curiae status, Supreme Court would consider, as fourth among five factors, whether case concerned questions of important public interest. [New York State Senator Kruger v. Bloomberg, 2003, 768 N.Y.S.2d 76, 1 Misc.3d 192](#)

CASE NOTES:

In deciding whether to grant amicus curiae status, Supreme Court would consider, as fourth among five factors, whether amicus curiae application or status would substantially prejudice rights of parties, including delaying original action/proceeding. [New York State Senator Kruger v. Bloomberg, 2003, 768 N.Y.S.2d 76, 1 Misc.3d 192](#)

CASE NOTES:

In deciding whether to grant amicus curiae status, Supreme Court would consider, as third among five factors, whether affidavit/affirmation in support indicated showing that parties were not capable of full and adequate presentation and that movant could remedy such deficiency, or indicated that movant would invite Court's attention to law or arguments which might otherwise escape its consideration, or indicated that its amicus brief would otherwise be of special assistance to the Court. [New York State Senator Kruger v. Bloomberg, 2003, 768 N.Y.S.2d 76, 1 Misc.3d 192](#)

public school system violated Election Law. [New York State Senator Kruger v. Bloomberg, 2003, 768 N.Y.S.2d 76, 1 Misc.3d 192](#)

CASE NOTES:

In deciding whether to grant amicus curiae status, Supreme Court would consider, as second among five factors, whether affidavit/affirmation in support indicated movant's interest in issues to be briefed and set forth the issues, with proposed brief attached. [New York State Senator Kruger v. Bloomberg, 2003, 768 N.Y.S.2d 76, 1 Misc.3d 192](#)

CASE NOTES:

In deciding whether to grant amicus curiae status, Supreme Court would consider, as first among five factors, whether movant moved by order to show cause; motion by order to show cause would be preferable procedure as Supreme Court could then set expeditious return date and procedure for providing notice by specifying how parties were to be served, so as not to interfere with main action. [New York State Senator Kruger v. Bloomberg, 2003, 768 N.Y.S.2d 76, 1 Misc.3d 192](#)

CASE NOTES:

The Supreme Court can set conditions on the granting of amicus status, such as limiting or denying oral argument, and even has the discretion, in an appropriate

N.Y. Comp. Codes R. & Regs. tit. 22, § 100.3

case, to allow the amicus to ask questions of a witness. [New York State Senator Kruger v. Bloomberg, 2003, 768 N.Y.S.2d 76, 1 Misc.3d 192](#)

CASE NOTES:

CASE NOTES:

If the granting of amicus curiae status might delay a case, the Supreme Court can deny the application in its discretion. [New York State Senator Kruger v. Bloomberg, 2003, 768 N.Y.S.2d 76, 1 Misc.3d 192](#)

CASE NOTES:

The same considerations which persuade the Supreme Court to deny intervention by permission may come to play in denying a request for amicus status. [New York State Senator Kruger v. Bloomberg, 2003, 768 N.Y.S.2d 76, 1 Misc.3d 192](#)

CASE NOTES:

Where all possible points of view have been represented by counsel, an application to appear as amicus will be denied, as nothing would be served by allowing additional appearances. [New York State Senator Kruger v. Bloomberg, 2003, 768 N.Y.S.2d 76, 1 Misc.3d 192](#)

CASE NOTES:

An amicus curiae is not a party, and cannot assume the functions of a party; he must accept the case before the court with issues made by the parties, and may not control the litigation. [New York State Senator Kruger v. Bloomberg, 2003, 768 N.Y.S.2d 76, 1 Misc.3d 192](#)

Where a person is uniquely qualified to give relevant testimony, the Supreme Court, in the exercise of its discretion, may call the person as amicus curiae to give testimony. [New York State Senator Kruger v. Bloomberg, 2003, 768 N.Y.S.2d 76, 1 Misc.3d 192](#)

CASE NOTES:

Where the movant seeking amicus curiae status begs leave of the Supreme Court to intervene as a party, but asserts no right against anyone, nor claims a duty owing by anyone, he may nevertheless be of assistance to the Court as amicus curiae, and be allowed to introduce argument, authority, or evidence to protect his interests. [New York State Senator Kruger v. Bloomberg, 2003, 768 N.Y.S.2d 76, 1 Misc.3d 192](#)

CASE NOTES:

Where the Supreme Court needs to obtain the advice of a disinterested expert on the law applicable to a proceeding before the Court, it can invite the expert to file a brief amicus curiae, provided that it gives notice to the parties of the person consulted and a copy of such advice, and affords the parties reasonable opportunity to respond. [New York State Senator Kruger v. Bloomberg, 2003, 768 N.Y.S.2d 76, 1 Misc.3d 192](#)

N.Y. Comp. Codes R. & Regs. tit. 22, § 100.3

9. Public comment

CASE NOTES:

Conduct of town court justice, after signing a search warrant authorizing search of company's premises for

CASE NOTES:

Conduct by judge in ex parte communication conveying the impression that his rulings will be based on his allegiance and loyalty to former political leader jeopardizes the public confidence in the integrity and impartiality of the judiciary and warrants removal from office. [Matter of Levine, 1989, 545 N.E.2d 1205, 546 N.Y.S.2d 817, 74 N.Y.2d 294](#)

CASE NOTES:

Judges and their representatives are expressly forbidden from publicly commenting about matters pending before them; order granting motion to quash plaintiff's subpoena duces tecum unanimously affirmed. [Baghoomian v. Basquiat \(1 Dept. 1990\) 561 N.Y.S.2d 212, 167 A.D.2d 124](#)

10. Personal bias or prejudice

CASE NOTES:

Under both federal constitutional and New York law, defendant's due process rights were not violated by trial

environmental violations, in telephoning the company's attorney and informing him of the impending search, was misconduct warranting removal from office, even if the judge did not phone the attorney to tip him off about the search warrant, but acted merely out of anger concerning the company's alleged conduct. [In re Gibbons, 2002, 778 N.E.2d 1041, 749 N.Y.S.2d 211, 98 N.Y.2d 448](#)

judge's refusal to recuse himself for bias or prejudice, given judge's certainty that he could be fair and impartial; trial judge, who participated in plea bargaining and attempted to induce defendant to take a plea, made comments concerning his assessment of strength of the evidence against defendant based upon information acquired when he presided over trial of co-perpetrator. [McMahon v. Hodges, 2002, 225 F.Supp.2d 357, reversed 382 F.3d 284](#)

CASE NOTES:

Removal was appropriate sanction for town justice who violated regulations which governed the handling of court funds, in failing to deposit funds in his official account within 72 hours of receipt and in failing to remit funds in timely manner, and who acted in retaliatory manner toward two attorneys and one attorney's client based upon animosity existing between them. [In re Corning, 2000, 741 N.E.2d 117, 718 N.Y.S.2d 272, 95 N.Y.2d 450](#)

CASE NOTES:

Judge created appearance of partiality by not recusing himself or disclosing relevant facts while presiding over cases involving party to whom he owed money; these actions warranted removal. [Matter of Murphy, 1993, 626 N.E.2d 48, 605 N.Y.S.2d 232, 82 N.Y.2d 491](#)

CASE NOTES:

N.Y. Comp. Codes R. & Regs. tit. 22, § 100.3

Town Court Justice, who routinely sought out and interviewed witnesses outside of court and made judgments based on their unsworn ex parte communications, who berated teen-age boy whom he believed to be carrying open container outside restaurant and used intemperate language and threatened harsh punishment if boy appeared in his court, who on one occasion arraigned and accepted guilty plea from and sentenced person appearing before him as complaining witness in unrelated manner although no accusatory instrument was filed and person was never informed of charges, who failed to disqualify himself from hearing two criminal cases even though he was witness to event underlying charges, and who accepted guilty plea from teen-ager based on teen-ager's statement which implicated third person in alleged crime which Town Justice had heard about through private conversation, violated 22 NYCRR §100.3(c)(1)(i) re disqualifying oneself in proceedings where impartiality may be questioned because of personal knowledge of disputed facts. [Matter of VonderHeide, 1988, 532 N.E.2d 1252, 536 N.Y.S.2d 24, 72 N.Y.2d 658](#)

CASE NOTES:

Husband failed to establish that supreme court was openly hostile and prejudiced against him in his divorce action and biased in favor of his wife, as could have affected his due process right to a fair trial or required a trial de novo of the issues, where court merely attempted to keep respective parties focused upon a succinct presentation of evidence relevant to issues to be decided, and court had such power in order to insure an orderly and expeditious trial. [Douglas v. Douglas \(3 Dept. 2001\) 722 N.Y.S.2d 87, 281 A.D.2d 709](#)

CASE NOTES:

Mandatory recusal was not warranted merely because pro se litigant was the spouse of the judge's opponent in a prior election. [People v. T & C Design, Inc., 1998, 680 N.Y.S.2d 832, 178 Misc.2d 971](#)

CASE NOTES:

County Court's remarks to co-defendant in prior proceeding some years earlier "not to appear before court again" do not, standing alone, establish that County Court's impartiality might be reasonably questioned under 22 NYCRR §100.3[c][1]. [People v. Cline \(3 Dept. 1993\) 596 N.Y.S.2d 925, 192 A.D.2d 957](#), leave to appeal denied [619 N.E.2d 668, 601 N.Y.S.2d 590, 81 N.Y.2d 1071](#)

CASE NOTES:

Trial court did not err in denying recusal motion, under 22 NYCRR §100.3[c], where defendant established no more than tenuous relationship between court and plaintiff's brokerage services. [Muriel Siebert & Co., Inc. v. Ponmany \(1 Dept. 1993\) 593 N.Y.S.2d 1010, 190 A.D.2d 544](#), Unreported

CASE NOTES:

Judge did not abuse his discretion by refusing to recuse himself from case because alleged victim held position of Chief Clerk of Supreme and County Courts for County of Niagara where record contained no suggestion that judge's impartiality might reasonably be challenged. [People v. Bibbs \(4 Dept. 1991\) 578 N.Y.S.2d 297, 177 A.D.2d 1056](#), appeal denied [590 N.E.2d 1206, 582 N.Y.S.2d 78, 79 N.Y.2d 918](#)

N.Y. Comp. Codes R. & Regs. tit. 22, § 100.3

CASE NOTES:

Judge should have disqualified himself from a proceeding wherein questions were raised regarding his impartiality; allegations and documentary evidence of a party raising serious questions as to the relationship between the judge and the party could easily be

Fact that court requested appointment of special prosecutor to conduct independent investigation of certain prosecutorial and police conduct which court observed during course of two prior trials, including murder prosecution of defendant, did not establish personal bias and prejudice on part of court against People in their prosecution of defendant. [People v. Diaz, 1986, 498 N.Y.S.2d 698, 130 Misc.2d 1024](#)

CASE NOTES:

Fact that court requested appointment of special prosecutor to conduct independent investigation of certain prosecutorial and police conduct which court observed during course of two prior trials, including murder prosecution of defendant, did not place court in accusatory posture with respect to office of District Attorney of Suffolk County so as to require court to recuse itself from presiding over defendant's case. [People v. Diaz, 1986, 498 N.Y.S.2d 698, 130 Misc.2d 1024](#)

CASE NOTES:

For bias and prejudice to disqualify a judge, it 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; it should not result from conduct which the court observed during

interpreted as affecting the judge's impartiality. [Leombruno v. Leombruno \(3 Dept. 1989\) 540 N.Y.S.2d 925, 150 A.D.2d 902](#)

CASE NOTES:

course of his function as a trial judge. [People v. Diaz, 1986, 498 N.Y.S.2d 698, 130 Misc.2d 1024](#)

11. Family relationship

CASE NOTES:

Petitioner admittedly presided over six cases involving relatives in violation of the Rules and Canons governing judicial conduct; this alone makes removal the appropriate sanction. [Matter of Wait, 1986, 490 N.E.2d 502, 499 N.Y.S.2d 635, 67 N.Y.2d 15](#)

CASE NOTES:

Any involvement by a judge in cases to which a family member is a party or any similar suggestion of favoritism to family members has been and will continue to be viewed as serious misconduct. [Matter of Wait, 1986, 490 N.E.2d 502, 499 N.Y.S.2d 635, 67 N.Y.2d 15](#)

CASE NOTES:

A judge must recuse herself when her husband has any

N.Y. Comp. Codes R. & Regs. tit. 22, § 100.3

involvement in a case before her. [Matter of Emory CC \(3 Dept. 1993\) 606 N.Y.S.2d 99, 199 A.D.2d 932](#), leave to appeal dismissed [634 N.E.2d 600, 612 N.Y.S.2d 104, 83 N.Y.2d 837](#)

12. Compensation of appointees

22 NYCRR 100.3, 22 NY ADC 100.3

22 NY ADC 100.3
END OF DOCUMENT

CASE NOTES:

Failure of Surrogate's Court judge to abide by legal requirements of office, in manner conveying appearance of impropriety and favoritism, warranted removal; judge had appointed friend as counsel to Public Administrator, and had systematically approved counsel's fee requests without considering statutory factors. [In re Feinberg, 2005, 5 N.Y.3d 206, 800 N.Y.S.2d 529, 833 N.E.2d 1204](#)