

**Matter of Thompson (State of N.Y. Off. of Ct.
Admin.)**

2022 NY Slip Op 31747(U)

May 23, 2022

Supreme Court, Kings County

Docket Number: Index No. 510995/2022

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 23rd day of May 2022.

HONORABLE FRANCOIS A. RIVERA

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HON. HARRIET L. THOMPSON,

Petitioner,

And

THE STATE OF NEW YORK OFFICE OF COURT ADMINISTRATION; HON LAWRENCE K. MARKS, CHIEF ADMINISTRATIVE JUDGE; and HON. DEBORAH KAPLAN, DEPUTY CHIEF ADMINISTRATIVE JUDGE,

Respondents,

and

HON. CAROL R. EDMEAD, ACTING SURROGATE JUDGE,

Nominal Respondent.

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By notice of petition and verified petition sworn to May 11, 2022, petitioner Honorable Harriet L. Thompson, commenced the instant Article 78 proceeding. On May 11, 2022, the petitioner filed a request for judicial intervention (RJI) pursuant to 22 NYCRR 202.6. The matter was then randomly assigned to this Court.

For the reasons set forth below the Court recuses itself.

LAW AND APPLICATION

Judiciary Law § 14 pertains to disqualification of a judge by reason of interest or consanguinity and states in pertinent part as follows:

“A judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding to which he is a party, or in which he has been attorney or counsel, or in which he is interested, or if he is related by consanguinity or affinity to any party to the controversy within the sixth degree. The degree shall be ascertained by ascending from the judge to the common ancestor, descending to the party, counting a degree for each person in both lines, including the judge and party, and excluding the common ancestor. But no judge of a court of record shall be disqualified in any action, claim, matter, motion or proceeding in which an insurance company is a party or is interested by reason of his being a policy holder therein. No judge shall be deemed disqualified from passing upon any litigation before him because of his ownership of shares of stock or other securities of a corporate litigant, provided that the parties, by their attorneys, in writing, or in open court upon the record, waive any claim as to disqualification of the judge.”

Absent a legal disqualification under Judiciary Law § 14, a trial judge is the sole arbiter of the need for recusal, and the decision is a matter of discretion and personal conscience (*State v Benjamin M.*, 199 AD3d 690 [2nd Dept 2021], citing *People v Moreno*, 70 NY2d 403, 405 [1987]).

“According to Judiciary Law § 14, a judge may neither take part, nor sit, in the decision ‘of, an action, claim, matter, motion or proceeding’ when any of the following factors exist: (1) the judge is a party to the matter, (2) the judge has been an attorney or counsel in the proceeding, (3) the judge is interested in the matter, (4) the judge is related by consanguinity or affinity, within the sixth degree (as defined by the statute), to any party to the proceeding” (*People v Page*, 183 Misc2d 370, 371[NY Co. Ct. 2000])

Canon 3C of the Code of Judicial Conduct and the essentially duplicative provisions of 22 NYCRR § 100.3(E) (the Rules of the Chief Administrator of the Courts regarding disqualification) contain a number of provisions regarding recusal (*id.*).

Generally, judges must disqualify themselves where their “impartiality might reasonably

be questioned” (*People v Page*, 183 Misc2d at 371, quoting Code of Judicial Conduct, Canon 3C [1]; 22 NYCRR § 100.3 [E][1]). The question of whether a judge should recuse himself to avoid an appearance of impropriety is a matter left to the personal conscience of the court.

There is no statutory basis for disqualification of this Court under Judiciary Law § 14. However, the Rules Governing Judicial Conduct (22 NYCRR part 100) compel a judge to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary,” (22 NYCRR 100.2[A]) “to refrain from allowing family, social, political or other relationships to influence his or her judicial conduct or judgment” (22 NYCRR 100.2 [B]) and to avoid even the appearance of impropriety (*Matter of George [State Commn. on Jud. Conduct]*, 22 NY3d 323, 331 [2013]; see 22 NYCRR 100.2). Further, while the decision of whether to recuse oneself from a particular matter lies within the discretion of the deciding judge, that discretion is not unlimited (*Concord Assocs., L.P. v LaBuda*, 121 AD3d 1270, 1272 [3rd Dept 2014]).

Because questions of recusal under New York law are decided by the judge whose recusal is sought, judges should consider the over-all situation and, if they see no bias or prejudice over the matter, they may sit on the matter absent an abuse of discretion (*McMahon v Hodges*, 225 F Supp 2d 357, 368 [SDNY 2002], revd, 382 F3d 284 [2nd Cir 2004], citing *People v. T & C Design, Inc.*, 178 Misc 2d 971 [Just Ct 1998]).

Not only must there be no prejudice, actual or implied, on part of judge or jury in a criminal case, but even the appearance of prejudice must be avoided (*People v Greenfield Const. Co., Inc*, 48 AD2d 765 [4th Dept 1975]).

In the case at bar, I have known the petitioner for years dating back to the time that she had appeared before me on a motion as an attorney prior to 2011. Since the petitioner's election to the Civil Court back in 2011, we have spoken numerous times as colleagues about our faith in God, life and about our cases. With her election to the Surrogate's Court, we would occasionally run into each other in the judge's parking lot in the morning and at the end of the day and exchange warm greetings. Shortly after she was removed from her post in the Surrogate's Court, I sent her an email message telling her that I was praying for her. In good conscience, I know that I could be fair and impartial in this case. However, due to my relationship with the petitioner, I feel compelled to recuse myself to avoid even the appearance of an impropriety.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.