

EXHIBIT E

Guide to Judiciary Policy

Vol. 2: Ethics and Judicial Conduct
Pt. B: Ethics Advisory Opinions

Ch. 2: Published Advisory Opinions

[§ 210 Index](#)

[§ 220 Committee on Codes of Conduct Advisory Opinions](#)

[No. 2: Service on Governing Boards of Nonprofit Organizations](#)

[No. 3: Participation in a Seminar of General Character](#)

[No. 7: Service as Faculty Member of the National College of State Trial Judges](#)

[No. 9: Testifying as a Character Witness](#)

[No. 11: Disqualification Where Long-Time Friend or Friend's Law Firm Is
Counsel](#)

[No. 17: Acceptance of Hospitality and Travel Expense Reimbursements From
Lawyers](#)

[No. 19: Membership in a Political Club](#)

[No. 20: Disqualification Based on Stockholdings by Household Family Member](#)

[No. 24: Financial Settlement and Disqualification on Resignation From Law Firm](#)

[No. 26: Disqualification Based on Holding Insurance Policy from Company that is
a Party](#)

[No. 27: Disqualification Based on Spouse's Interest as Beneficiary of a Trust
from which Defendant Leases Property](#)

[No. 28: Service as Officer or Trustee of Hospital or Hospital Association](#)

[No. 29: Service as President or Director of a Corporation Operating a
Cooperative Apartment or Condominium](#)

[No. 32: Limited Solicitation of Funds for the Boy Scouts of America](#)

[No. 33: Service as a Co-trustee of a Pension Trust](#)

[No. 34: Service as Officer or on Governing Board of Bar Association](#)

[No. 35: Solicitation of Funds for Nonprofit Organizations, Including Listing of
Judges on Solicitation Materials](#)

[No. 36: Commenting on Legal Issues Arising before the Governing Board of a
Private College or University](#)

[No. 37: Service as Officer or Trustee of a Professional Organization Receiving
Governmental or Private Grants or Operating Funds](#)

[No. 38: Disqualification When Relative Is an Assistant United States Attorney](#)

[No. 40: Service on Governing Board of Nonprofit Organization that Tends to
Become Involved in Court Proceedings](#)

[No. 42: Participation in Fund Raising for a Religious Organization](#)

[No. 43: Service as a Statutory Member of a Citizens' Supervisory Commission of
the County Personnel Board](#)

[No. 44: Service on Governing Board of a Public College or University](#)

[No. 46: Acceptance of Public Testimonials or Awards](#)

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- [No. 47: Acceptance of Complimentary or Discounted Club Memberships](#)
- [No. 48: Application of Judicial Conference Conflict-of-Interest Rules for Part-Time Magistrate Judges](#)
- [No. 49: Disqualification Based on Financial Interest in Member of a Trade Association](#)
- [No. 50: Appearance Before a Legislative or Executive Body or Official](#)
- [No. 51: Law Clerk Working on Case in Which a Party Is Represented by Spouse's Law Firm](#)
- [No. 52: American Bar Association or Other Open-Membership Bar Association Appearing as a Party](#)
- [No. 53: Political Involvement of a Judge's Spouse](#)
- [No. 55: Extrajudicial Writings and Publications](#)
- [No. 57: Disqualification Based on Stock Ownership in Parent Corporation of a Party or Controlled Subsidiary of a Party](#)
- [No. 58: Disqualification When Relative is Employed by a Participating Law Firm](#)
- [No. 59: Providing Recommendations or Evaluations of Nominees for Judicial, Executive, or Legislative Branch Appointments](#)
- [No. 60: Appointment of Spouse of an Assistant United States Attorney as Part-Time Magistrate Judge](#)
- [No. 61: Appointment of Law Partner of Judge's Relative as Special Master](#)
- [No. 63: Disqualification Based on Interest in Amicus that is a Corporation](#)
- [No. 64: Employing a Judge's Child as Law Clerk](#)
- [No. 65: Providing a Recommendation for Commutation, Pardon, or Parole](#)
- [No. 66: Disqualification Following Conduct Complaint Against Attorney or Judge](#)
- [No. 67: Attendance at Independent Educational Seminars](#)
- [No. 69: Removal of Disqualification by Disposal of Interest](#)
- [No. 70: Disqualification When Former Judge Appears as Counsel](#)
- [No. 71: Disqualification After Oral Argument](#)
- [No. 72: Use of Title "Judge" by Former Judges](#)
- [No. 73: Providing Letters of Recommendation and Similar Endorsements](#)
- [No. 74: Pending Cases Involving Law Clerk's Future Employer](#)
- [No. 75: Disqualification Based on Military or Other Governmental Pensions](#)
- [No. 76: Service of State Employees as Part-Time United States Magistrate Judges](#)
- [No. 78: Disqualification When Judge Is a Utility Ratepayer or Taxpayer](#)
- [No. 79: Use of Chambers, Resources, and Staff for Law-Related Activities Permitted by Canon 4](#)
- [No. 80: Use of Chambers, Resources, and Staff for Activities Permitted by Canon 4 that are Not Related to the Law](#)
- [No. 81: United States Attorney as Law Clerk's Future Employer](#)
- [No. 82: Joining Organizations](#)
- [No. 83: Payments to Law Clerks from Future Law Firm Employers](#)
- [No. 84: Pursuit of Post-Judicial Employment](#)
- [No. 85: Membership and Participation in the American Bar Association](#)

- [No. 86: Applying the Honoraria, Teaching, and Outside Earned Income Limitations](#)
- [No. 87: Participation in Continuing Legal Education Programs](#)
- [No. 88: Receipt of Mementoes or Other Tokens Under the Prohibition Against the Receipt of Honoraria for Any Appearance, Speech, or Article](#)
- [No. 89: Acceptance of Honors Funded Through Voluntary Contributions](#)
- [No. 90: Duty to Inquire When Relatives May Be Members of Class Action](#)
- [No. 91: Solicitation and Acceptance of Funds from Persons Doing Business With the Courts](#)
- [No. 92: Political Activities Guidelines for Judicial Employees](#)
- [No. 93: Extrajudicial Activities Related to the Law](#)
- [No. 94: Disqualification Based on Mineral Interests](#)
- [No. 95: Judges Acting in a Settlement Capacity](#)
- [No. 96: Service as Fiduciary of an Estate or Trust](#)
- [No. 97: Disqualification of Magistrate Judge Based on Appointment or Reappointment Process](#)
- [No. 98: Gifts to Newly Appointed Judges](#)
- [No. 99: Disqualification Where Counsel Is Involved in a Separate Class Action in Which the Judge or a Relative Is a Class Member](#)
- [No. 100: Identifying Parties in Bankruptcy Cases for Purposes of Disqualification](#)
- [No. 101: Disqualification Due to Debt Interests](#)
- [No. 102: Disqualification Issues Relating to Judge Being Sued in Official Capacity, Including Representation By Department of Justice](#)
- [No. 103: Disqualification Based on Harassing Claims Against Judge](#)
- [No. 104: Participation in Court Historical Societies and Learning Centers](#)
- [No. 105: Participation in Private Law-Related Training Programs](#)
- [No. 106: Mutual or Common Investment Funds](#)
- [No. 107: Disqualification Based on Spouse's Business Relationships](#)
- [No. 108: Participation in Government-Sponsored Training of Government Attorneys](#)
- [No. 109: Providing Conflict Lists to Departing Law Clerks](#)
- [No. 110: "Separately Managed" Accounts](#)
- [No. 111: Interns, Externs and Other Volunteer Employees](#)
- [No. 112: Use of Electronic Social Media by Judges and Judicial Employees](#)
- [No. 113: Ethical Obligations for Recall-Eligible Magistrate and Bankruptcy Judges](#)
- [No. 114: Promotional Activity Associated with Extrajudicial Writings and Publications](#)
- [No. 115: Appointment, Hiring, and Employment Considerations: Nepotism and Favoritism](#)
- [No. 116: Participation in Educational Seminars Sponsored by Research Institutes, Think Tanks, Associations, Public Interest Groups, or Other Organizations Engaged in Public Policy Debates](#)

**Committee on Codes of Conduct Advisory Opinion
No. 57: Disqualification Based on Stock Ownership in Parent Corporation
of a Party or Controlled Subsidiary of a Party**

This opinion considers the question of whether a judge should recuse when the judge owns stock in the parent corporation of a controlled subsidiary that is a party or owns stock in a controlled subsidiary and its parent corporation is a party.

Canon 3C(1) of the Code of Conduct for United States Judges provides that:

(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 in which:

* * *

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

Canon 3C(3)(c) defines a "financial interest" as "ownership of a legal or equitable interest, however small." The provision enumerates exceptions to the definition, including ownership in a mutual or common investment fund; the proprietary interest of a policy-holder in a mutual insurance company, or a similar proprietary interest, where the outcome of the proceeding could not substantially affect the value of the interest; and ownership of government securities, where the outcome of the proceeding could not substantially affect the value of the securities. None of these exceptions directly apply, and the Committee does not consider the situation at issue to be analogous to the exceptions. See *also* Advisory Opinion Nos. 26 ("Disqualification Based on Holding Insurance Policy from Company that is a Party") and 49 ("Disqualification Based on Financial Interest in Member of a Trade Association").

The Committee concludes that under the Code the owner of stock in a parent corporation has a financial interest in a controlled subsidiary. Therefore, when a judge knows that a party is controlled by a corporation in which the judge owns stock, the judge should recuse. See Canon 3C(3)(c). When a parent company does not own all or a majority of stock in the subsidiary, the judge should determine whether the parent has control of the subsidiary. The Committee advises that the 10% disclosure requirement in Fed. R. App. P. 26.1 is a benchmark measure of parental control for recusal purposes. However, if the judge owns stock in the subsidiary rather than the parent corporation, and the parent corporation appears as a party in a proceeding, the judge must recuse only if the interest in the subsidiary could be substantially affected by the proceeding. *Id.*

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