

RECUSAL

Recusal is defined as the withdrawal of a judge from a case on the grounds that they are not the appropriate judicial officer to handle that case because of a possible conflict of interest or lack of impartiality. Ethically, judges should not only recuse themselves when the possible conflict or lack of impartiality actually exists, but when it could appear to a reasonable person that a conflict does exist.

[Federal Judicial Code of Conduct](#) 3 C clearly sets forth the specifics:

1) Disqualification.

- a) 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:
- the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
 - the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or lawyer has been a material witness;
 - 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;
 - the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person is:
 - a party to the proceeding, or an officer, director, or trustee of a party;
 - acting as a lawyer in the proceeding;
 - known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or
 - to the judge's knowledge likely to be a material witness in the proceeding;

- the judge has served in governmental employment and in that capacity participated as a judge (in a previous judicial position), counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.
- b) A judge should keep informed about the judge’s personal and fiduciary financial interests and make a reasonable effort to keep informed about the personal financial interests of the judge’s spouse and minor children residing in the judge’s household.

This Code does not apply to Supreme Court Justices. However, on November 13, 2023, the Supreme Court issued the Justices’ Code of Conduct, which was adopted by the sitting Justices. The Canons that were adopted are similar to the one applicable to the rest of the federal judiciary. One key difference between the Justices’ Code and the Judges’ Code is that the Supreme Court’s new ethical rules expressly recognize Justices’ “duty to sit”—the obligation to participate in cases unless disqualified. The assertion that Justices have a duty to sit reflects a practical difference between the Supreme Court and the lower federal courts. In the lower courts, another judge may step in to take a recused judge’s place; by contrast, current law does not allow another jurist to hear a case in a recused Justice’s stead. The disqualification of a Justice from a particular case can thus leave the Supreme Court with an even number of Justices to decide the case and increase the likelihood that the Court would be evenly divided and unable to create binding precedent for future litigants. Because the judgment of the court below is affirmed when the Supreme Court divides evenly in a case, the commentary on the Justices’ Code of Conduct—quoting a memorandum by former Associate Justice Antonin Scalia—states that the recusal of a Justice is “effectively the same as casting a vote against the petitioner.” In light of those considerations, the commentary explains, the recusal requirements in Canon 3 of the Justices’ Code differ from the requirements in the Judges’ Code, and recusal rules for Justices “should be construed narrowly.”

Like the Judges’ Code of Conduct, the Justices’ Code of Conduct itself contains no enforcement mechanism. Alleged violations of the Judges’ Code can be the basis for a misconduct complaint under the *Judicial Conduct and Disability Act*. The Justices’ Code cannot serve as the basis for a similar process because the Act does not apply to Supreme Court Justices. (Source: Congressional Research Service.)

Principles to Consider

LWVUS positions on the Congress and the Presidency, the other two branches of government, pay little attention to specific policy approaches; instead, they focus on principles. Those principles were designed for evaluating future policy proposals and ensure a durable foundation for advocacy. The decision for whether a judge should recuse from a case encompasses several principles within the scope of the Federal Judicial Study, including:

- Judicial ethics
- Judicial accountability
- Transparency

- Nonpartisanship
- Legitimacy
- Independence