

SUPREME COURT OF NEW HAMPSHIRE

Lorenz v. New Hampshire Administrative Office of the Courts

151 N.H. 440 (2004) · Decided September 30, 2004

SUMMARY

The New Hampshire Supreme Court considered a motion to recuse its current and retired justices in a challenge by court stenographers to Administrative Order 2004-02 and alleged promises of continued employment. The court held that participation in issuing the challenged administrative order and the naming of the Supreme Court as a defendant did not independently require disqualification. It nevertheless conditionally granted recusal for certain justices because the appeal involved evaluating statements and conduct of current judicial colleagues who might become witnesses, while recognizing that the Rule of Necessity could require participation if substitutes were unavailable.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Per Curiam; Dalianis; Duggan; Galway
JURISDICTION	New Hampshire
DECIDED	September 30, 2004
DISPOSITION	other
PROCEDURAL POSTURE	Petitioners moved to recuse all current and retired New Hampshire Supreme Court justices from an appeal involving a challenge to Administrative Order 2004-02 and claims concerning alleged promises of lifetime employment. The Supreme Court conditionally granted the motion in part as to Justices Dalianis, Duggan, and Galway, recused itself from the appeal, and requested appointment of substitute justices.
STANDARD OF REVIEW	Recusal is evaluated under an objective standard: whether a reasonable, fully informed, disinterested observer would question the court's impartiality or entertain significant doubt that justice would be done.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Lorenz and other court stenographers v. New Hampshire Administrative Office of the Courts, New Hampshire Supreme Court

TOPICS

appellate procedure

standard of review

administrative law

constitutional law

civil procedure

PRACTICE AREAS

judicial recusal

appellate procedure

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QUESTIONS PRESENTED

1. Whether a judge must recuse merely because the judge participated in issuing the administrative order challenged by the litigant.
2. Whether a judge must recuse merely because the litigant names the court as a party.
3. Whether the circumstances of the appeal created a reasonable question about the participating justices' impartiality.
4. Whether the Rule of Necessity could require the justices to participate if no substitute judge were available.

HOLDINGS

1. A judge is not disqualified merely because the judge participated in promulgating an administrative order whose validity is later challenged.
2. A judge is not disqualified merely because a litigant sues or threatens to sue the judge or names the court as a defendant, absent allegations of personal bias or interest.
3. Recusal is required when an objective, fully informed person might reasonably question the judge's impartiality.
4. If no substitute justice is available, the Rule of Necessity may require otherwise disqualified members of the court of last resort to participate so that the litigants receive a final adjudication.

KEY QUOTATIONS

“A court or judicial officer is often called upon to render an opinion of law on a matter on which the court or officer has formally rendered an opinion. Prior knowledge of a legal issue is not grounds to disqualify a judge.” (151 N.H. at 442)

“A judge cannot be disqualified merely because a litigant sues or threatens to sue him or her.” (151 N.H. at 443)

“If no judge can be found who possesses the requisite degree of impartiality in regard to a particular case, the rule of necessity dictates that the original judge assigned to the case need not be disqualified despite his or her partiality.” (151 N.H. at 444)

FACTUAL BACKGROUND

The petitioners were court stenographers whose employment was being terminated pursuant to Administrative Order 2004-02, issued by the New Hampshire Supreme Court in its administrative capacity. They alleged

reliance on written and oral promises of lifetime employment made by various chief justices and superior court justices, including two current Supreme Court colleagues. The superior court found the alleged promises unauthorized and beyond the officials' authority and found insufficient allegations that the Supreme Court or its chief justice had ratified them. If the petitioners prevailed, the two colleagues could become material witnesses at trial.

PROCEDURAL HISTORY

The petitioners, court stenographers, sought declaratory relief against the Administrative Office of the Courts and the New Hampshire Supreme Court, asserting equitable estoppel against termination except for good cause based on poor performance or misconduct. The superior court rejected their claims, ruling that alleged promises of lifetime employment were unauthorized and that the petitioners had not adequately alleged ratification by the chief justice or Supreme Court. During the resulting appeal, the petitioners moved to recuse the participating justices.

DISPOSITION

other

REMAND INSTRUCTIONS

The court conditionally recused itself and requested appointment of substitute justices under RSA 490:3. If no substitute judge is available, the Rule of Necessity may require the original justices to participate.

CASES CITED

- Douglas v. Douglas, 143 N.H. 419, 427-28 (1999)
- Kaufman v. Court of Appeal, 647 P.2d 1081, 1084-85 (Cal. 1982)
- In re Virginia Electric & Power Co., 539 F.2d 357, 364 (4th Cir. 1976)
- Directive No. 17 v. Vermont Supreme Court, 576 A.2d 127, 128-32 (Vt. 1990)
- State v. Criminal Defense Lawyers v. Kaye, 744 N.E.2d 123, 126-27 (N.Y. 2000)
- Kentucky Utilities v. South East Coal, 836 S.W.2d 407, 408 (Ky. 1992), cert. dismissed, 506 U.S. 1090 (1993)
- Office of Court Administrator v. Background Information Services, 994 P.2d 420, 425-26 (Colo. 1999)
- Berberian v. Kane, 425 A.2d 527, 527-28 (R.I. 1981)
- Morgenthau v. Cooke, 436 N.E.2d 461, 468-69 & n.3 (N.Y. 1982)
- State v. Bader, 148 N.H. 265, 268 (2002), cert. denied, 538 U.S. 1014 (2003)
- Taylor-Boren v. Isaac, 143 N.H. 261, 268 (1998)
- Cheney v. U.S. District Court for the District of Columbia, 124 S. Ct. 1391, 1394 (2004) (Scalia, J.)
- Grinnell v. State, 121 N.H. 823, 826 (1981)
- United States v. Will, 449 U.S. 200, 213-16 (1980)
- State Court Administrator v. Background Information Services, 994 P.2d 420, 426 (Colo. 1999)

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