

SUPREME COURT OF NEW JERSEY

STUART RABNER
CHIEF JUSTICE



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MEMORANDUM

Directive # 04-09
[Supersedes Directive #07-99]

TO: SUPERIOR COURT JUDGES
TAX COURT JUDGES
MUNICIPAL COURT JUDGES

FROM: CHIEF JUSTICE STUART RABNER

SUBJ: DISQUALIFICATION OF JUDGES CHARGED WITH OR CONVICTED OF DWI
OFFENSES OR DOMESTIC VIOLENCE OFFENSES

DATE: MAY 29, 2009

On June 17, 1999, this Court issued Directive #7-99, which consolidated and restated procedures previously adopted by the Supreme Court regarding judicial disqualifications as a result of DWI or domestic violence matters. After almost ten years under that Directive, the Supreme Court has decided that substantive modifications to the policy are required. The revisions are consistent with the Legislature's imposition of enhanced penalties for DWI violations since Directive #7-99 was issued. In particular, in 2004 the Legislature lowered the blood alcohol level required for DWI offenses from 0.10% to 0.08% and lengthened the period of license suspension for first-time offenders. L. 2003, c. 314 (mandating three-month suspension when violation involves blood alcohol level below 0.10% and lengthening suspension from six months to seven when level above 0.10%); see also L. 2003, c. 315 (imposing mandatory jail time for third drunk driving offense); L. 2002, c. 34, § 17 (increasing fines for DWI offenses); L. 2000, c. 83 (permitting the installation of ignition interlock devices after any DWI violation). The revised policy language follows.

Driving While Intoxicated (DWI) Disqualifications

The Supreme Court has modified its administrative policy for judges who have been charged with or convicted of driving while intoxicated (DWI) or related offenses. The policy applies to all judges sitting in Municipal Court and Superior Court, including temporary assignments.

Judges charged with or convicted of DWI or related offenses shall not hear any DWI cases while the charges are pending and, if convicted, until (a) one year from the date of the imposition of sentence (as extended by any stay), or (b) all conditions imposed as a result of the DWI conviction are satisfied in full, including suspension of the judge's driver's license and completion of the prescribed program requirements of the Intoxicated Driver Resource Centers, whichever is longer.

If, at the time the charges are brought, the judge has reserved decision in any DWI case, that case shall be transferred by the Assignment Judge to another judge. The matter shall be determined on the papers unless the defendant objects. If the defendant interposes an objection, a mistrial shall be declared and the case will be retried before the judge to whom the matter was transferred.

The Court has further determined that a judge who has been disqualified from hearing DWI matters under this policy shall not thereafter hear such cases without the prior approval of the Supreme Court on the application of the judge. Supreme Court approval of an application to resume hearing DWI cases will not preclude a judge from exercising his or her power of recusal in any particular DWI case or in any category of such cases.

Domestic Violence Disqualifications

The Supreme Court also has adopted a policy for assigning cases to judges when a judge is a party to a domestic violence matter. The policy applies to all judges sitting in Municipal Court and Superior Court, including temporary assignments.

A judge who is a party in a domestic violence matter shall not hear any domestic violence cases while the matter is pending and for a period of one year from the entry of the trial court's disposition. If the disposition is a final restraining order against the judge, the judge shall be disqualified from hearing any domestic violence case during the period any restraint is in place or for one year from the date of the order, whichever is longer.

If, at the time a domestic violence complaint is filed, the judge has reserved decision in any domestic violence case, that case shall be transferred by the Assignment Judge to another judge. The matter shall be determined on the papers unless a party objects. If a party interposes an objection, a mistrial shall be declared and the case will be retried before the judge to whom the matter was transferred.

The Court has further determined that a judge who has been disqualified from hearing domestic violence matters under this policy shall not thereafter hear such cases without the prior approval of the Supreme Court on the application of the judge. Supreme Court approval of an application to resume hearing domestic violence cases will not preclude a judge from exercising his or her power of recusal in any particular domestic violence case or in any category of such cases. A judge disqualified under this policy may not automatically resume hearing domestic violence matters if a temporary order of restraint is vacated, or if the matter in which the judge is involved is concluded without the entry of relief in favor of the complainant. Once disqualified

under this policy, a judge must obtain the approval of the Supreme Court prior to hearing any domestic violence cases.

cc: Associate Justices
Hon. Glenn A. Grant, Acting Administrative Director
Hon. Edwin H. Stern, Presiding Judge
Assignment Judges
Hon. Joseph C. Small, Presiding Judge
Vicinage Municipal Court Presiding Judges
AOC Directors and Assistant Directors
Clerks of Court
Trial Court Administrators
Municipal Division Managers
John A. Tonelli, Professional Services
Helen E. Szabo, Judge Support Services
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant