

THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

RECUSAL ON APPEAL

PREFACE

When should an appellate judge consider recusal from participation in an assigned case? Are mandated recusals automatic? Enforceable? Who decides when the appearance of impropriety requires recusal? Are there circumstances in which the rule of necessity overrides a rule suggesting disqualification?

The three essays that follow illuminate these and other questions. They address the issues in depth, but with clarity that makes for excellent, thought-provoking reading.

I venture to add to this discussion the observation that in Arkansas at least, the principle that a judge has a duty to remain on a case except when disqualification is required runs into difficulty when, as an example, sitting judges may be called upon to decide the validity of a new tax applicable to all Arkansas residents. The Arkansas Constitution, which provides that “no justice shall participate in any case in which he or she might be interested in the outcome,”¹ might seem to require the entire court to step aside. But replacement judges, required by the same constitution to be qualified electors, would also be disqualified in such a case. It is clear, in short, that there are

1. Ark. Const. amend. 80, § 13.

instances in which the rule of necessity trumps the rule suggesting recusal, as the Arkansas Supreme Court has held.²

Pervading the issues of recusal looms the need for public confidence in the fairness and integrity of the judicial branch of government. These essays shine a bright light upon this inquiry, and as both a citizen and a former appellate judge, I hope that all will read and benefit from the pages that follow.

RHTjr
Little Rock
June 7, 2005

2. *White v. Priest*, 73 S.W.3d 572 (Ark. 2002) (per curiam). Similar considerations sometimes arise in cases before the United States Supreme Court, where a recusing justice cannot be replaced, and where, as a result of a recusal, tie votes become possible.