The Last Stand of the Duty to Sit:
Recusal in Louisiana

By Roy J. Rodney, Jr.
and
John K. Etter

Recusal is an ancient civil law concept fundamental to democracy and due process.[1] Prior to the 19th century, judges were allowed to preside in situations that today would almost universally be considered improper.[2] Disqualification of judges for bias was rare, and except for those cases that contravened Sir Edward Coke's core principle that "no man should be a judge in his own case,"[3] only a direct financial stake in a case usually disqualified a judge. This view persisted into the 20th century.

The "duty to sit doctrine" — what one writer termed the "pernicious" version of the concept[4] — emphasizes a judge's obligation to hear and decide cases unless there are compelling grounds for disqualification.[5] That doctrine pushes judges to resolve close disqualification issues against recusal, when the presumption should run in exactly the opposite direction.[6]

The duty to sit doctrine is often traced to William Blackstone and the pre-1800 English attitude that "the law will not suppose the possibility of bias or favour in a judge."[7] The prevailing opinion was that "challenges to judicial impartiality would undermine public respect for the legal system."[8] The first reported American case to use the term "duty to sit" appeared in 1824.[9]

One of the most famous 20th century endorsements of the duty to sit occurred in *Laird v. Tatum*, a case involving a claim that the Army was unlawfully surveilling citizens.[10] In *Laird,* the plaintiff attempted to recuse Justice William Rehnquist, who before his appointment to the Supreme Court had testified as an expert witness for the Justice Department at Senate hearings on the constitutionality of the federal government's surveillance of citizens. In refusing to recuse himself, Rehnquist stated, among other reasons, that "[t]hose federal courts of appeals which have considered the matter have unanimously concluded that a federal judge has a duty to sit where not disqualified which is equally as strong as the duty to not sit where disqualified."[11]

In 1973, the American Bar Association (ABA) adopted Canon 3(C) (now Rule 2.11) and the Model Code of Judicial Conduct to eliminate the duty to sit as a factor to be weighed in deciding a recusal motion. Instead, a judge should disqualify himself if his impartiality might reasonably be questioned, or if required by law. The Judicial Code and the case law interpreting it have effectively obliterated the idea of weighing a judge's duty to sit in most jurisdictions, since the "appearance of impropriety" standard is so high that recusal is favored in close cases.[12] In most states today, any legal presumption against disqualification created by the duty to sit doctrine is considered detrimental to the judicial system because it reverses what should be the logical presumption in favor of disqualification,[13] so that in close cases "the balance tips in favor of recusal."[14] Yet, the duty to sit has persisted for 40 years in Louisiana, despite the ABA's changes to the Model Judicial Code and the adoption by other states of similar language.[15]

Statutory Foundations of Louisiana Recusal Law

> *"All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality or unreasonable delay, for injury to him in his person, property, reputation, or other rights."* La. Const. art. 1. § 22 (1974).

Louisiana's first recusal statute, enacted in 1858, provided that a judge could be recused in criminal cases only if the judge was related by blood or marriage to the defendant. That prohibition was expanded in 1871 to familial relations to the fourth degree and prior employment as an attorney in the matter. In 1880, the recusal rules were made applicable to civil cases and grounds for recusal were added: the judge's interest in the cause of the litigation and the judge having rendered a judgment in the same cause in another court. In 1882, the law was amended to allow recusal where the judge had previously been employed or consulted as an advocate in the cause. The current recusal rules in civil cases are codified in Louisiana Code of Civil Procedure articles 151 through 160l.[16] A district court judge may recuse himself, even if no motion for recusal has been filed, or may file a written application with the Louisiana Supreme Court, which may recuse the judge if there are sufficient grounds for recusal.[17] Otherwise, the party seeking recusal must file a written motion setting forth the grounds for recusal.[18] If the motion sets forth a "valid" ground, the trial judge may either recuse himself or refer the motion to another judge for hearing. If a motion is filed to recuse an appellate judge, he may either recuse himself, or have the matter heard by the other members of the panel or, alternatively, by all of the members of the court.[19]

Rise of the Louisiana Code of Judicial Conduct Canons

The Louisiana Code of Judicial Conduct was adopted by the Louisiana Supreme Court on March 5, 1975, and became effective on Jan. 1, 1976.[20] "The Code is binding on all judges, and judges are bound exclusively by [its] provisions."[21] Canon 2 requires judges to avoid both impropriety *and* the appearance of impropriety. Canon 2(B) provides, in relevant part, that "[a] judge shall not allow family, social, political, or other relationships to influence" him. Canon 3(C) provides that "[a] judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law[22] or by applicable Supreme Court rule. In all other instances, a judge should not recuse himself or herself."[23]

If the Judicial Canons can be the basis for disciplining judges, then the Canons should also be the basis for removal of judges from cases where such violations exist. In *In re Cooks*, the Supreme Court held in a 1997 disciplinary proceeding

that a judge should have recused herself due to the appearance of potential bias and prejudice under La. C.C.P. art. 151, and that her failure to do so violated the Judicial Canons.[24] The judge was close friends with one of the litigants and her attorney, the attorney was representing the judge in her divorce, and the litigant had also tutored the judge's children, helped decorate the judge's office and was reimbursed for school supplies and groceries.[25] The court held that article 151 applied, and the Judicial Code and Louisiana Constitution required recusal when "the circumstantial evidence of bias or prejudice is so overwhelming that no reasonable judge would hear the case." *Id.* at 903. Because the standard for determining whether it appears that a judge is "biased or prejudiced" is an objective one, it does not require direct evidence of *actual* bias or prejudice.[26] The *Cooks* ruling is consistent with the court's earlier pronouncements that recusal is "not only for the protection of the litigants but generally to see that justice is done by an impartial court . . . [and] for the sake of appearances to the general public. . . ."[27]

Yet, also in 1997, the Supreme Court gave a nod to what one writer referred to as the "benign version" of the duty to sit,[28] stating, "[i]n each possible recusal situation, there is a countervailing consideration which militates in favor of a judge's not recusing himself, or being recused; that is, that the judge has an obligation, part of his sworn duty as a judge, to hear and decide cases properly brought before him. He is not at liberty, nor does he have the right, to take himself out of a case and burden another judge with his responsibility without good and legal cause."[29]

In 2004, the Supreme Court recused a district judge in *Folse v. Transocean Offshore USA, Inc.* based solely upon a Judicial Canon violation.[30] Defendants had moved to recuse a *pro tem* judge because of his firm's relationship with plaintiff's counsel.[31] The district court denied the recusal motion and the 4th Circuit Court of Appeal denied supervisory writs. However, the Supreme Court reversed and recused the judge, due to the appearance of impropriety under Canon 3(C). Notably, that ground for recusal is not specifically listed in La. C.C.P. art. 151.[32]

In 2006, the Supreme Court held in *Disaster Restoration Dry Cleaning, L.L.C. v. Pellerin Laundry Machinery Sales Company, Inc.* that the Code of Judicial Conduct binds all judges and instructs them as to their expected ethical conduct.[33] In 2009, the court reiterated that "the primary purpose of the Code of Judicial Conduct is to protect the public rather than to discipline judges."[34]

In 2012, the Supreme Court reversed the denial of a motion to recuse a 5th Circuit judge in *Tolmas v. Parish of Jefferson* on the basis of La. C.C.P. art. 151(A)(4) and transferred the case to the 2nd Circuit, in order to avoid even the appearance of impropriety.[35]

La. Circuit Courts Persist in Applying the Duty to Sit in Non-Disciplinary Cases

Louisiana courts of appeal and district courts are not applying the Code of Judicial Conduct with any consistency to recusal motions, despite the Supreme Court's rulings in *Cooks*, *Disaster Restoration* and *Tolmas*. Rather, some courts continue to support both a duty to sit and a presumption of impartiality.[36]

In 2000, the 4th Circuit Court of Appeal distinguished *Cooks* and found in *Guidry v. First National Bank of Commerce* that because La. C.C.P. art. 151 does not include "appearance of impropriety" as a grounds for recusal, "[a]bsent an amendment or a contrary interpretation by the Supreme Court, a mere appearance of impropriety, not statutorily listed in La. C.C.P. art. 151, cannot be a basis for recusal."[37]

In a 2001 case, *Southern Casing of Louisiana, Inc. v. Houma Avionics, Inc.*, the defendant sought recusal of the trial court judge because the judge had practiced law with the owner of the plaintiff company; had formerly represented the owners of the plaintiff company in federal and state court; had accepted a plant as a gift; and had numerous dealings with the company owner over 32 years.[38] The motion to recuse was denied because actual bias was not proven.[39] The 1st Circuit rejected the "appearance of impropriety" standard as a mandatory recusal ground, citing the duty to sit and the allegedly exclusive grounds of article 151.[40]

Opponents of recusal often rely on the Supreme Court's 2002 decision in *Chauvin v. Sisters of Mercy Health Systems*[41] to deny writs on the 4th Circuit's ruling that for the proposition that article 151 is the exclusive statutory grounds for recusing a judge, the movant must show actual bias to successfully recuse a judge.[42] This reliance is misplaced because in *Chauvin*, the parties seeking recusal apparently failed to allege that the trial court's actions violated the Code of Judicial Conduct. Because the *Chauvin* court was never presented with the issue, it did not consider whether the judge's conduct would have warranted recusal under the Judicial Code.

In 2008's *Radcliffe 10, L.L.C. v. Zip Tube Systems of Louisiana, Inc.*, the 5th Circuit affirmed the denial of defendants' motion to recuse the trial court judge where plaintiffs' sole damages expert had been the judge's campaign treasurer and was the judge's accountant.[43] The appellate court held that Code of Judicial Conduct Canon 3(C) "does not provide an independent basis of recusal of a judge" and quoted the "duty to sit" doctrine from *Lemoine*, without acknowledging either *Cooks* or *Disaster Restoration*.[44]

In 2011, the same court affirmed sanctions against an attorney for filing two motions to recuse trial court judges, cautioning "courts and litigants of the obvious dangers to our system of justice — the use of a motion to recuse as a litigation tool in response to unfavorable rulings."[45]

In *Florida Parishes Juvenile Justice Commission v. Hannist*, the 1st Circuit reversed the denial of a recusal motion in 2011. The defendant had filed a motion to recuse all of the judges of the 21st Judicial District Court (JDC) pursuant to Art. 151(A)(4).[46] This civil matter arose from a criminal case where the criminal defendant, who served as secretary of the Florida Parishes Juvenile Justice Commission (Commission), was accused of creating false invoices for a fictitious court reporting service and then converting the funds to her personal use. The commission has an ongoing working relationship with the judges of the 21st JDC in conjunction with district administration. Two members, who allegedly signed many of the checks used

to perpetuate the alleged fraud, had been appointed to the commission by judges of the 21st JDC.[47] An ad hoc judge denied the motion to recuse, finding no evidence of actual bias.[48] The 1st Circuit reversed the denial, citing *Tolmas*, and found that the fact that commission members had been appointed by the 21st JDC judges created the potential for bias, since the outcome of the case could affect how the judges' credibility will be viewed.[49]

Federal System, States Adopt Higher Standards for Judicial Impartiality than Louisiana

The United States Supreme Court has often held that "[t]rial before an unbiased judge is essential to due process."[50] In *Caperton v. A.T. Massey Coal Co.*, the court recently ordered the recusal of a West Virginia Supreme Court justice who refused to voluntarily recuse himself from a case after the defendant corporation spent $5 million on advertising in support of the justice's election.[51] Without questioning the lower court's finding of no actual bias, impartiality or impropriety, the court found that the risk of perceived bias was so great that due process required recusal.[52]

Under federal statutes and jurisprudence, a judge should be recused when "a reasonable and objective person, knowing all the facts, would harbor doubts concerning the judge's impartiality."[53] The Supreme Court recognized that due process "may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between [the] parties."[54] The federal 5th Circuit has opined that "[i]f the question of whether [to recuse] is a close one, the balance tips in favor of recusal."[55]

Despite congressional elimination of the duty to sit in the 1974 amendments to 28 U.S.C. § 455, many federal courts continue to rely on it, at least in dicta.[56] A number of federal cases still refer to Justice Rehnquist's opinion on the duty to sit in *Laird v. Tatum*[57] as good law on questions of judicial disqualification (although many courts cite that case simply for the less controversial position that a judge's philosophy is not ground for recusal) and fail to acknowledge that the 1974 amendment to 28 U.S.C. § 455 was intended to legislatively overrule Justice Rehnquist's *Laird* opinion.

According to Flamm's disqualification treatise, the duty to sit is now a minority rule.[58] Other states are inconsistent in their application of the duty to sit doctrine, despite adoption of the 1972 ABA Judicial Code Canon 3(C) or its successor 1990 Code Canon 3(E).[59]

Conclusion

Louisiana should modify its Codes of Civil and Criminal Procedure as well as its Code of Judicial Conduct to clearly state that, when presented with recusal, the subject judge should not weigh his duty to sit against the merits of the motion to recuse, and that close questions are to be decided in favor of recusal. The citizenry's right to a judiciary above suspicion should outweigh any consideration that there is any dereliction of duty when a judge is recused. The clear adoption of the "appearance of impropriety" recusal standard, already contained in Canon 2 to the Louisiana Code of Judicial Conduct, would be consistent with the majority rule and the ABA Model Code of Judicial Conduct.

The authors would like to acknowledge the assistance of Veronica J. Lam in the preparation of this article.

FOOTNOTES

1. "Pursuant to the Roman Code of Justinian, a party who believed that a judge was under suspicion was permitted to recuse that judge, so long as he did so prior to the time the issue was joined." Richard E. Flamm, "History of and Problems with the Fed. Judicial Disqualification Framework," 58 Drake L. Rev. 751, 753 (Spring 2010), citing Code Just. 3.1.14 (Justinian 1530 S.P. Scott. Trans.). "This expansive power on the part of early litigants to effect a judge's recusal formed the basis for the broad disqualification statutes that generally prevail in civil law countries today." *Id.*, p. 753 n. 13.

2. For example, Chief Justice John Marshall arguably violated even the most narrow disqualification norm by serving as a justice in Marbury v. Madison, 5 U.S. 137, 2 L. Ed. 60 (1803), which arose out of Marshall's own failure as Secretary of State to properly deliver William Marbury's commission to serve as a justice of the peace.

3. *See* Dr. Bonham's Case, 77 Eng. Rep. 646, 652 (K.B. 1610).

4. *See* Jeffrey W. Stempel, "Chief William's Ghost: The Problematic Persistence of the Duty to Sit," 57 Buffalo L. Rev. 813, 814 (May 2009).

5. "In close cases, judges should err on the side of recusal in order to enhance public confidence in the judiciary and to ensure that subtle, subconscious, or hard-to-prove bias, prejudice, or partiality does not influence decision-making. The pernicious version of the duty to sit concept pushes judges in exactly the wrong direction, suggesting that they should decline to preside only if the grounds for disqualification are undeniably clear." *Id.*

6. *Id.*

7. Sir William Blackstone, *Commentaries on the Laws of England*, vol. 3 (Oxford: Clarendon Press, [1765]-1969) at p. 361.

8. *See* James, Hazard & Leubsdorf, n. 74, at 394, at § 7.3.

9. *See* Waterhouse v. Martin, 7 Tenn. 373, 385 (Tenn. 1824).

10. 409 U.S. 824 (1972).

11. *Id.* at 837 (citations omitted).

12. For instance, the State of New York does not appear to apply the "duty to sit." *See, e.g.*, In re Murphy, 626 N.E.2d 48 (N.Y. 1993) (appearance of impropriety resulted in removal of judge who did not recuse himself in a case, where the judge, who had previously borrowed money from a party, did not disclose that loan); Murray v. Murray, 424 N.Y.S.2d 50 (N.Y. App. Div. 1980) (integrity of court system requires judge's recusal when appearance of impropriety emerges). *But see,* Spremo v. Babchik, 589 N.Y.S.2d 1019, 1022 (N.Y. Sup. Ct. 1992), *aff'd as modified*, 628 N.Y.S.2d 167 (N.Y. App. Div. 1992), *appeal denied*, 658 N.E.2d 221 (N.Y. 1992) (judge has "duty" not to recuse unless personally satisfied that he cannot be impartial).

13. *See*, Leslie W. Abramson, "Appearance of Impropriety: Deciding When a Judge's Impartiality Might Reasonably Be Questioned," 14 Geo. J. Legal Ethics 55, 62 n. 37 (Fall 2000).

14. In re Boston's Children First, 244 F.3d 164, 167 (1 Cir. 2001) (quoting Nichols v. Alley, 71 F.3d 347, 352 (10 Cir. 1995)).

15. *See*, ABA Standing Committee on 1990 Code, Legislative Draft 15 (1990), citing Laird, *supra* note 13.

16. La. Code Civ. Proc. art. 151 provides the following grounds for recusal:

A. A judge of any court, trial or appellate, shall be recused when he:

(1) Is a witness in the cause;

(2) Has been employed or consulted as an attorney in the cause or has previously been associated with an attorney during the latter's employment in the cause, and the judge participated in representation in the cause;

(3) Is the spouse of a party, or an attorney employed in the cause or the judge's parent, child, or immediate family member is a party or attorney employed in the cause; or

(4) Is biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys or any witness to such an extent that he would be unable to conduct fair and impartial proceedings.

B. A judge of any court, trial or appellate, may be recused when he:

(1) Has been associated with an attorney during the latter's employment in the cause;

(2) At the time of the hearing of any contested issue in the cause, has continued to employ, to represent him personally, the attorney actually handling the cause (not just a member of that attorney's firm), and in this case the employment shall be disclosed to each party in the cause;

(3) Has performed a judicial act in the cause in another court; or

(4) Is related to: a party or the spouse of a party, within the fourth degree; an attorney employed in the cause or the spouse of the attorney, within the second degree; or if the judge's spouse, parent, child, or immediate family member living in the judge's household has a substantial economic interest in the subject matter in controversy sufficient to prevent the judge from conducting fair and impartial proceedings in the cause.

See also La. Code Crim. Proc. art. 671, *et seq.* (recusal in criminal cases).

17. *See* La. Code Civ. Proc. art. 152.

18. *See* La. Code Civ. Proc. art. 154.

19. *See* La. Code Civ. Proc. art. 160.

20. The Supreme Court also issues advisory opinions via the Judicial Ethics Committee. The committee was created by the Supreme Court in conjunction with the Judicial Code. While not always consistent, the opinions of the committee require that judicial activities must not violate the reasonableness test, and adopted a standard of impropriety and partiality. *See, e.g.*, Opinion No. 158 (July 26, 1999).

21. In re Lemoine, 96-2116 (La. 1/14/97), 686 So.2d 837, 841 (citing In re Decuir, 95-0056, p. 8 (La. 5/22/95), 654 So.2d 687, 692 and La. R.S. 42:1167).

22. *See* La. Code Civ. Proc. arts. 151-52; La. Code Crim. Proc. arts. 671-72.

23. La. Code of Judicial Conduct, Canon 3(C); *see also,* In re Lemoine, *supra*, 686 So.2d at 843 (citing Donnell v. Donnell, 567 So.2d 1143, 1145-46 (La. App. 2 Cir. 1990)); In re Office of Chief Justice, 12-1342 (La. 10/16/12), 101 So.3d 9, 13, n. 11.

24. 96-1447 (La. 5/20/97), 694 So.2d 892.

25. *Id.* at 897-98.

26. *Id.*, at 903 n. 15 (citing In re Chiasson, 549 So.2d 259, 263 (La. 1989)).

27. State v. Price, 274 So.2d 194, 197 (La. 1973). *See also*, In re Benge, 09-1617, p. 38 (La. 11/6/09), 24 So.3d 822, 845 ("[T]he judicial branch depends upon the confidence of the people it serves. Without that necessary confidence, the judiciary cannot serve its paramount purpose of providing a fair and impartial open forum in which the public may resolve its disputes.")

28. Stempel, "Chief William's Ghost: The Problematic Persistence of the Duty to Sit," *supra*, 57 Buffalo L. Rev. at 820.

29. In re Lemoine, *supra*, 686 So.2d at 840.

30. Folse v. Transocean Offshore USA, Inc., 04-1069, p. 1 (La. 5/7/04), 872 So.2d 467, 468.

31. *See* Folse v. Transocean Offshore USA, Inc., Parish of Orleans, Civ. Dist. Ct. Div. A, No. 03-10602, Honeywell Int'l Inc.'s Motion to Recuse and Memorandum in Support.

32. *Id. See also,* Jacobs v. U.S. Fidelity & Guaranty Co., 09-0042 (La. 4/13/09), 6 So.3d 1273 (granting writ and ordering recusal of the district court judge, where the *pro se* plaintiff was apparently the judge's campaign manager during the pendency of the case, and the briefing asserted violations of Canons 2 and 3 as grounds for recusal).

33. 05-0715 at p. 4 (La. 4/17/06), 927 So.2d 1094, 1097 (citing In re Lemoine, *supra*, 686 So.2d at 841) (citations omitted).

34. *See* In re Judge Joan S. Benge, 09-1617 at p. 37 (La. 11/6/09), 24 So.3d 822, 844 (quoting In re Hunter, 02-1975 (La. 8/19/02), 823 So.2d 325, 333 (citations omitted)).

35. Tolmas*, supra*, 87 So.3d at 855-56.

36. Louisiana is not alone in such practice. A dozen or more state judiciaries continue to invoke variations of the duty to sit concept, with occasional federal courts joining in, despite the clear mandate of federal law. *See* Stempel, "Chief William's Ghost: The Problematic Persistence of the Duty to Sit," *supra*, 57 Buffalo L. Rev. at 882-87.

37. Guidry v. First Nat'l Bank of Commerce, 98-2383 (La. App. 4 Cir. 3/1/00), 755 So.2d 1033, 1037 (internal citations omitted).

38. Southern Casing of La., Inc. v. Houma Avionics, Inc., 00-1930, 00-1931 (La. App. 1 Cir. 9/28/01), 809 So.2d 1040.

39. The judge specifically noted that there was "a small legal community in Houma. Everybody comes in contact with everybody else in either an adversarial or a representative or a fiduciary capacity at some point in our career." *Id.* at 1049.

40. *Id.* at 1049-50.

41. Chauvin v. Sisters of Mercy Health Sys. St. Louis Inc., 02-1587 (La. 9/30/02), 825 So.2d 1194. *See also,* Whalen v. Murphy, 05-2446 (La. App. 1 Cir. 9/15/06), 943 So.2d 504, *writ denied*, 06-2915 (La. 3/16/07), 952 So.2d 696; Broussard v. Broussard, 11-0922 (La. App. 1 Cir. 12/21/11), 2011 La. App. Unpub. LEXIS 780, *14 (citing Southern Casing and Whalen for the proposition that article 151(4)(A) requires a finding of actual bias or prejudice, and the bias or prejudice must be of a substantial nature).

42. Chauvin, *supra*, 818 So.2d at 835.

43. Radcliffe 10, L.L.C. v. Zip Tube Sys. of La., Inc., 07-1801 (La. App. 1 Cir. 8/29/08), 998 So.2d 107.

44. *Id.* at 115.

45. Slaughter v. Bd. of Supervisors of So. Univ., 10-1114 (La. App. 1 Cir. 8/2/11), 76 So.3d 465, 472 (citing Suazo v. Suazo*,* 07-0795 (La. App. 1 Cir. 9/14/07), 970 So.2d 642, 652).

46. Fla. Parishes Juvenile Justice Comm'n v. Hannist, et al., 12-1003 (La. App. 1 Cir. 9/6/12), 2012 La. App. LEXIS 1113, *1-2, *writ denied*, 12-2188 (La. 12/14/12), 104 So.3d 442.

47. *Id.* at *2-3.

48. *Id.* at *3.

49. *Id.*

50. Johnson v. Miss., 403 U.S. 212, 216 (1971). *See also,* Connally v. Georgia, 429 U.S. 245 (1977); In re Murchison, 349 U.S. 133 (1955); Tumey v. Ohio, 273 U.S. 510, 523 (1927).

51. Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009).

52. *Id.* at 886-87. *See also,* Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 825 (1986) ("[J]ustice must satisfy the appearance of justice").

53. Patterson v. Mobil Oil Corp., 335 F.3d 476, 484 (5 Cir. 2003); *see* 28 U.S.C. §§ 144, 455; Caperton, *supra*, 556 U.S. at 886 ("The failure to consider objective standards requiring recusal is not consistent with the imperatives of due process.").

54. Murchison, *supra*, note 50, 349 U.S. at 136.

55. *See also,* Liljeberg v. Health Sci. Acquisition Corp., 486 U.S. 847, 865 (1988) (affirming recusal of a judge who was a Tulane University trustee in a matter affecting the university's property even though he had no recollection or understanding of the benefit to the university at that time).

56. *See* Stempel, "Chief William's Ghost: The Problematic Persistence of the Duty to Sit," *supra*, 57 Buffalo L. Rev. at 872-74.

57. Laird v. Tatum*, supra*, n. 13, 409 U.S. at 877.

58. *See* Richard E. Flamm, *Judicial Disqualification: Recusal and Disqualification of Judges*, Section 20.8, pp. 610-12 (2007 and Supp. 2012). Flamm's disqualification treatise lists considerable but not exhaustive state-specific jurisprudence on the duty to sit.

59. Judicial Canon 3(C) prompted the 1974 amendments to 28 U.S.C. § 455. *See* Stempel, *supra*, 57 Buffalo L. Rev. 813, 882-97.

Roy J. Rodney, Jr., founder and managing partner of the law firm of Rodney & Etter, L.L.C., has an extensive history of defending against injustice and infringement of civil liberties. The diverse law firm handles civil disputes, including contracts, business torts, unfair trade practices, environmental justice, intellectual property, and civil and constitutional rights. Rodney has been recognized by national, state and local legal associations, receiving the New Orleans Martinet Legal Society's Trailblazer of the Year Award from the Coalition of Leadership and Development, the A.P. Tureaud Award, the Louisiana State Bar Association's Pro Bono Award and the National Bar Association's (NBA) President's Award. He is past chair of the NBA's Civil Trial Advocacy Section. (620 N. Carrollton Ave., New Orleans, LA 70119)

John K. Etter joined the Rodney & Etter, L.L.C., law firm at its establishment in 2003 and became a member in 2005. He has experience in commercial litigation, with a focus on science and technology, intellectual property and class action defense, particularly for environmental toxic torts. He received his law degree in 1997 from Tulane University Law School, where he was a member of the Tulane Law Review. *A registered patent attorney, Etter is admitted to practice before the United States Patent and Trademark Office, as well as before other state and federal courts in Louisiana and Texas. He is a registered professional engineer. (620 N. Carrollton Ave., New Orleans, LA 70119)*