

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF A MOTION           §       No. 255, 2007  
FOR RECUSAL OF THE HONORABLE   §  
M. JANE BRADY                           §  
  §

Submitted: July 5, 2007  
Decided: August 6, 2007

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

This 6<sup>th</sup> day of August 2007, upon consideration of the briefs of the parties and the record on appeal, it appears to the Court that:

(1) Joseph A. Hurley, Esquire filed a notice of appeal from a letter opinion and order issued by Superior Court Judge M. Jane Brady denying his motion requesting that Judge Brady recuse herself “in all substantive matters involving attorney Joe Hurley.” The letter opinion was issued by Judge Brady in response to a “Motion to Recuse” which was not filed in any pending proceeding before the Superior Court. Instead, the motion was docketed as a miscellaneous civil complaint.

(2) The State of Delaware has filed a motion to dismiss the appeal on the grounds that Mr. Hurley, as counsel, lacks standing to seek Judge Brady’s recusal in his own name and, in the alternative, because his request is an interlocutory order for which he failed to properly seek review pursuant to Supreme Court Rule 42. Mr. Hurley, through his legal counsel, has filed a response in opposition to the

State's motion to dismiss. After careful consideration, we find it manifest that Mr. Hurley's appeal must be dismissed because it was not filed in a proceeding pending before Judge Brady and, therefore, is premature for adjudication. Because the "Motion to Recuse" was filed prematurely, we also conclude that the Superior Court should have dismissed Mr. Hurley's motion as not ripe for adjudication instead of denying the motion on the merits. Accordingly, we dismiss this appeal and remand this matter with instructions to vacate the decision and dismiss the complaint.

(3) In his "Motion to Recuse," Mr. Hurley has provided background on a criminal prosecution of a client he represented during Judge Brady's tenure as Attorney General. He has also described his opposition to her confirmation as a Superior Court judge, including his testimony before the Delaware State Senate. Notwithstanding his testimony, Judge Brady was confirmed. Mr. Hurley contends that after Judge Brady's confirmation, she told a reporter that if he had a case before her, she "probably w[ould] have to recuse myself. It would probably be best."<sup>1</sup> Although Mr. Hurley alluded to this alleged statement in correspondence to Judge Brady, it was not directly cited by him in his Motion to Recuse. Nor did Judge Brady refer to it in her ruling on Mr. Hurley's motion. In her ruling denying

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<sup>1</sup> Mr. Hurley attached a copy of the reporter's article to his Motion to Recuse.

the “Motion to Recuse,” Judge Brady found “no basis to hold that there is a conflict in handling matters in which Mr. Hurley represents litigants.”

(4) The jurisdiction of this Court over civil matters is set forth in Article IV, Section 11 of the Delaware Constitution, which provides, in part, that the Court has jurisdiction to hear appeals from interlocutory and final judgments of the Superior Court in civil cases.<sup>2</sup> In order to be justiciable, an appeal, among other things, must involve an actual controversy that is ripe for judicial determination.<sup>3</sup> This Court generally will not exercise appellate jurisdiction in a case in which the controversy has not yet matured to the point where judicial action is appropriate.<sup>4</sup>

(5) “The requirement that judges be impartial is a fundamental principle of the administration of justice.”<sup>5</sup> “A judge should disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned.”<sup>6</sup> When faced with a motion to recuse, the judge not only must be satisfied subjectively that he or she can hear the cause free of bias or prejudice, but objectively there must be no “appearance of bias sufficient to cause doubt as to the judge’s impartiality.”<sup>7</sup> “The appearance of impropriety is conceptually distinct

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<sup>2</sup> Del. Const. art. IV, § 11(1)(a).

<sup>3</sup> *Stroud v. Milliken Enter., Inc.*, 552 A.2d 476, 479-80 (Del. 1989).

<sup>4</sup> *Id.* at 480.

<sup>5</sup> *Los v. Los*, 595 A.2d 381, 383 (Del. 1991).

<sup>6</sup> DELAWARE JUDGES’ CODE OF JUDICIAL CONDUCT, Canon 3C.(1).

<sup>7</sup> *Los*, 595 A.2d at 384-85.

from the subjective approach of a judge facing a possible disqualification challenge and does not depend on the judge's belief that he or she is acting properly.”<sup>8</sup> Indeed, even when a judge is acting in good faith, the appearance of impropriety will prevent him or her from presiding over the case. We review the trial judge’s subjective determination for abuse of discretion, but we review the trial judge’s decision under the objective prong *de novo*.<sup>9</sup>

(6) “Any inquiry into the question of whether a judge’s impartiality might reasonably be questioned is case specific.”<sup>10</sup> With no parties to an actual case or controversy before this Court, there is no context for us to fully evaluate the merits of Mr. Hurley’s motion.<sup>11</sup> Until a motion for recusal is decided in a specific case adjudicated before Judge Brady, the matter is “simply not ripe for review.”<sup>12</sup> For this same reason, it was premature for Judge Brady to have ruled formally on the merits of the motion for recusal.<sup>13</sup>

NOW, THEREFORE, IT IS ORDERED that the appeal is DISMISSED and this matter is REMANDED to the Superior Court with instructions to vacate the decision below and dismiss the complaint. In the event a similar motion is made

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<sup>8</sup> *Stevenson v. State*, 782 A.2d 249, 256 (Del. 2001).

<sup>9</sup> *Id.* at 255.

<sup>10</sup> *Id.* at 258.

<sup>11</sup> *Los*, 595 A.2d at 384.

<sup>12</sup> *Industry Network Sys. v. Armstrong World Indus.*, 54 F.3d 150, 156 (3d Cir. 1995).

<sup>13</sup> *Stroud*, 552 A.2d at 482.

by Mr. Hurley before Judge Brady in a specific case pending before her, the matter shall be decided *de novo*.

BY THE COURT:

/s/Henry duPont Ridgely  
Justice