

**JUDICIAL ETHICS ADVISORY COMMITTEE
OF THE
STATE OF DELAWARE**

The Hon. Joseph R. Slight, III, Chair
The Hon. Mardi F. Pyott, Vice Chair
The Hon. Kenneth S. Clark, Jr., Secretary
The Hon. Sheila G. Blakely
The Hon. Donald F. Parsons, Jr.
The Hon. Robert B. Coonin
The Hon. Mary M. Johnston

June 29, 2007

JEAC 2007-3

[redacted]

New Castle County Courthouse
500 North King Street, Suite 9450
Wilmington, DE 19801-3736

**Re: Opinion of the Judicial Ethics Advisory Committee: To
What Extent May A Judge Who Was The State's Attorney
General Preside Over Criminal Matters That Arose During
The Judge's Tenure In That Office ?**

Dear Judge [redacted]:

Thank you for your request of March 21, 2007, seeking advice from the Judicial Ethics Advisory Committee ("Committee") on the extent to which a judge may, consistent with the Delaware Judges' Code of Judicial Conduct, preside over criminal matters that arose during that judge's former tenure as Attorney General of the State of Delaware.

Certain facts, which you kindly provided, together with other information generally available to the public place your inquiry in context. We understand, for example, that you served as Attorney General from January 1995 to December 2005.¹

The Attorney General is a Constitutional officer charged by law with the supervision,

¹ You also served as a deputy attorney general from 1977 to 1990. Although you mention this in your letter, we do not understand your request to seek an opinion on disqualification from matters that arose when you served in that capacity.

direction, and control over the State Department of Justice.² One of the powers, duties, and responsibilities of the Attorney General and the Department of Justice is to have charge of all State criminal proceedings.³ As a result, every indictment or information filed during your tenure went out over your signature. The Attorney General's responsibility concerning criminal activity may actually commence prior to the initiation of formal proceedings: he or she has the power to "investigate matters involving the public peace, safety and justice and to subpoena witnesses and evidence in connection therewith."⁴ These investigative powers manifest themselves in several ways. For example, the Attorney General employs a staff of state detectives who, under the auspices of the Attorney General's statutory powers, initiate and pursue criminal investigations. In addition, police agencies, prior to arresting a suspect, may confer with the Attorney General's attorney staff for advice concerning investigative activities. Either course may result in the issuance of an Attorney General's subpoena.

The Attorney General's subpoena serves the same purpose as subpoenas issued by investigative grand juries.⁵ As a result, through the use of this subpoena, the Attorney General has the power to compel the attendance of witnesses and the production of documents. Although its reach can extend to examining witnesses in preparation of trial,

² DEL. CONST. OF 1897, art. III, §21; DEL. CODE ANN. tit 29, § 2502 (2003). The Attorney General, in addition to other responsibilities, provides legal advice to State agencies and represents in legal proceedings and actions brought for or against them in their official capacity state officers, agencies, boards, and any other state instrumentalities. *Id.* at § 2504 (2) & (3).

³ DEL. CODE ANN. tit 29, § 2504 (6)(2003).

⁴ *Id.* at § 2504 (4).

⁵ *State v. Grossberg*, Del Super., Cr. No. IN96-12-0127, IN96-12-0128, Ridgely, P.J., 1998 WL 117975 *1 at fn. 4 (Jan 23, 1998). *See also State v. Horsey*, Del.Super., 1998 WL 732897 at *1 (Jul 21, 1998).

the Attorney General's subpoena is "ordinarily used *prior* to securing an indictment."⁶

Historically, the text of the subpoena has invoked the authority of the Attorney General:

GREETINGS:

THE ATTORNEY GENERAL OF THE STATE OF DELAWARE
COMMANDS YOU to appear before the said ATTORNEY GENERAL
or HIS DEPUTY ATTORNEY GENERAL, at his office in the County
Court House in Wilmington, on the date, at the time and at the place
specified below to testify on behalf of the State all those things you shall
know or be examined in.⁷

Once issued, the subpoena is returnable to the Attorney General's office.⁸ But if the party to whom the subpoena is issued fails to comply, the Attorney General must apply to the courts for enforcement.⁹

For a year following your appointment to the bench, you did not handle any matters in which the State was a party. This practice extended to any criminal matters, which are, of course, brought in the name of the State. You are now receiving assignments to your first criminal matters and question the proper scope of your involvement in pending matters.

The Committee's Advice

Because we believe that a judge's impartiality is reasonably questioned and the appearance of impropriety results when the judge presides over certain criminal proceedings on charges filed when that judge was the Attorney General, we conclude that a judge is disqualified from presiding over such proceedings. Moreover, we conclude a judge is similarly disqualified when the criminal charge resulted from an investigation

⁶ *Id. citing State v. MacDonald*, Del.Super., 1993 WL 20042 (Jan. 20, 1993) (ORDER) at *3 (emphasis added).

⁷ See *In re McGowan*, 303 A.2d 645, 646 (Del. 1973)(quoting the text of the subpoena at issue in that decision).

⁸ *Id.* at 647 (noting that a subpoena not returnable to the Attorney General is unenforceable).

⁹ *In re Henry C. Eastburn & Son*, 147 A.2d 921 (Del. 1973).

commenced during the judge's tenure as Attorney General if: 1) the judge had substantial and personal involvement in that investigation, or 2) an Attorney General's subpoena was issued during the course of the investigation whether or not the judge was substantially and personally involved.

Scope of the Committee's Advice

At the outset, the Committee must resolve whether it may permissibly issue an opinion responsive to your request. Based on your answers to specific inquiries and our understanding of the scope of the Committee's opinions, we conclude that the Committee may advise you on this matter.

Rule 4 of the RULES OF THE JUDICIAL ETHICS ADVISORY COMMITTEE circumscribes the Committee's authority to issue advisory opinions. In pertinent part, it dictates:

Scope of opinions. . . . The committee shall only issue opinions that address contemplated or proposed future conduct and shall not issue opinions addressing past or current conduct unless the past or current conduct relates to future conduct or is continuing. The committee may not issue an opinion in a matter known to be the subject of a past or pending litigation or disciplinary investigation or proceeding.¹⁰

The mandate against advising on past or present conduct underscores that the purpose of the Committee is to inform a judge's decision on future or contemplated activities that may implicate the Judge's Code of Judicial Conduct. The Committee does not exist to condemn or excuse activities in which a judge has or is engaged. That is the function of the Court on the Judiciary. Similarly, the mandate against issuing advice on a matter known to be an issue in any litigation or disciplinary proceeding prevents the Committee from becoming embroiled in matters being adjudicated in some other tribunal. As such,

¹⁰RULES OF THE JUDICIAL ETHICS ADVISORY COMMITTEE, Rule 4 (b).

the mandate serves to avoid the potential that a Committee opinion will infringe on the prerogatives of that tribunal.

Given the strictures of Rule 4, we asked you to clarify whether any of the “pending” matters you mention in your March 21st request were cases that had been filed or investigated during your tenure as Attorney General and, if so, whether any recusal motions on that basis had been filed. Your response assured us that, except for presiding over a violation of probation proceeding and possibly hearing a return of *capias* during which you set bail, you “have not handled any matters regarding a case filed during [your] term or investigated during [your] term as Attorney General.”¹¹ In addition, you apprised us that “[t]here have been no recusal motions filed on this basis.”¹² Based on these representations, we conclude that advising you on disqualification issues will not exceed the scope of the Committee’s mandate under Rule 4.¹³

Applicable Canons of Judicial Conduct

Your request implicates several canons of the Delaware Judges’ Code of Judicial Conduct. They are:

Canon 2. A judge should avoid impropriety and the appearance of impropriety in all activities.

A. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3. A judge should perform the duties of office impartially and diligently.

¹¹ Emails to the undersigned dated May 29 & April 20, 2007, *re* JEAC Opinion.

¹² Email to the undersigned dated April 20, 2007, *re* JEAC Opinion

¹³ During the pendency of your request, a matter has arisen in which your recusal has been sought and your decision on that issue is being litigated. *See, I/M Motion for Recusal of the Honorable[redacted]Del. Supr. (No.255,2007)*. Having reviewed the claims in that litigation, the Committee concludes that your former tenure as Attorney General does not form the basis of the recusal motion presented there. As such, that pending litigation does not address the subject of your request to the Committee.

C. Disqualification.

(1) A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) The judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) The judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it, or the judge was associated in the practice of law within the preceding year with a law firm or lawyer acting as counsel in the proceeding;

.

(e) The judge has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

Prior Opinions of the Committee

Although the Committee has issued several opinions advising when a judge must disqualify him or herself, none of those opinions address disqualification resulting from the judge's former tenure as a prosecutor. So, for example, in JEAC Opinion 2004-3, we concluded that, assuming measures were put in place to insulate an associate judge's secretary from cases in which his father or his father's law firm appeared as counsel before the court, the remaining judges of the court were not disqualified from hearing such cases. Without some specific ground for disqualification, the insulating measures avoided the appearance of impropriety and immunized the judges from having their impartiality "reasonably called into question."¹⁴

¹⁴ JEAC Opinion 2004-3 at 4 (Sept. 8, 2004)

On the other hand, we relied on both the appearance of impropriety standard in Canon 2 and the reasonably questioned impartiality standard in Canon 3 to advise that a judge should disqualify herself from matters in which attorneys from the judge's former law firm appeared. When that judge took the bench, her former firm purchased her partnership interest under conditions that provided for payment over a period of time. Since all of the payments under that agreement had not been made, the firm remained indebted to the judge. This continued indebtedness merited disqualification.¹⁵

On other disqualification questions, we advised that a judge may preside over a hearing where a prospective witness's father was a painting subcontractor who was working on the judge's home.¹⁶ And although a judge's impartiality might reasonably be questioned were the judge to preside over a hearing where two health care professionals who were treating the judge's adult child appeared as witnesses, we felt the disqualification could be remitted provided the judge thought he could remain impartial and obtained written waivers from the parties following disclosure.¹⁷

Disqualification of Judge Who Has Served as Attorney General

The Committee agrees, as you yourself have acknowledged, that you should disqualify yourself from matters in which, as Attorney General, you had "substantial or direct involvement or decision-making."¹⁸ Even at a superficial level of analysis, such involvement would have afforded you personal knowledge of potentially disputed evidentiary facts. Moreover, as to matters in which you had direct, substantial involvement or made direct, substantial decisions, you would have served as counsel or

¹⁵ JEAC Opinion 2000-1 (May 23, 2000).

¹⁶ JEAC Opinion 1997-4 (Oct. 20, 1997).

¹⁷ JEAC Opinion 1997-3 (Sept. 23, 1997).

¹⁸ Letter dated March 21, 2007 to Hon. Joseph R. Slights, III.

advisor in the capacity of a governmental official. Both of these are specific instances listed in Canon 3 where a judge's impartiality might reasonably be questioned and, as such, merit disqualification.¹⁹

On a more fundamental level, however, making a direct, substantive decision in a matter in your capacity as Attorney General necessarily signifies that you formed some belief about the merits of the matter. Direct, substantive involvement can likewise lead to the formulation of such beliefs. By deciding to seek an indictment, for example, a prosecutor signifies belief in the defendant's guilt or at least, belief that the evidence justifies a criminal prosecution.²⁰ Deciding not to indict may signify a belief of innocence or, at a minimum, that a case of guilt cannot be proved. A decision to either indict or not to indict, therefore, represents some judgment by the prosecutor. Such judgments made while a presently sitting judge was a prosecutor, irreconcilably conflict with the impartial judgments that judge will have to make as an adjudicator. These pre-adjudicatory judgments could amount to bias or prejudice either for or against the defendant. At the very least, they give rise to the appearance of impropriety. The former contravenes Canon 3C (1) (a); the latter, Canon 2. Both canons factor into our advice on disqualification.²¹ As a result, we concur with your decision that you must disqualify

¹⁹ See DELAWARE JUDGE'S CODE OF JUDICIAL CONDUCT, Canon 3C (1) (a) & (e).

²⁰ In fact, a prosecutor who initiates criminal charges despite compelling evidence of innocence commits a disciplinary infraction. See, e.g., "Prosecutor in Duke Case Disbarred by Ethics Panel," NY Times at <http://www.nytimes.com/2007/06/17/us/17duke.html?ex=1182830400&en=d671e7f732124f95&ei=5070&emc=eta1> (June 17, 2007) (last accessed June 18, 2007). While the legal significance of an indictment is that a neutral and detached body has determined only the existence of probable cause, the belief of the indicting prosecutor is not similarly cabined. It would be an atypical prosecutor who chose to indict without entertaining at the same time a good faith belief that she could establish the defendant's guilt beyond a reasonable doubt.

²¹ See JEAC Opinion 2000-1 (May 23, 2000)(applying the appearance and impartiality standards to a request for advice on disqualification).

yourself from matters in which, as Attorney General, you had direct, substantial involvement or made a direct, substantial decision.

More problematic are those matters that were either pending or initiated while you served as the State's chief prosecutor but concerning which you were neither personally nor substantially involved. As you note, there are no Delaware judicial opinions addressing these situations. Nor has the Committee itself offered advice on them. Other jurisdictions analyzing the potential for disqualification that arises in these situations differentiate between prosecutions actually filed while the judge served as chief prosecutor versus matters that were investigated but did not result in a filed prosecution, at least not during the judge's former tenure.²² As we discuss below, the Committee believes this distinction is appropriate and applies it here.

Prosecutions Filed

Presiding over a criminal case that was filed during your tenure as Attorney General – or a criminal case that, having been earlier filed, was prosecuted during your time in office – creates the appearance of impropriety and gives rise to reasonable questions concerning your impartiality. This advice applies equally to such cases despite that you were neither personally nor substantially involved in the prosecution of those cases.

Prosecutorial decisions made by deputy attorneys general without the Attorney General's input are nevertheless attributable to the Attorney General. The Attorney General has supervisory responsibility and control over the Delaware Department of

²² See, generally, CYNTHIA GRAY, ETHICAL ISSUES FOR NEW JUDGES 19 (American Judicature Society, 2003 update).

Justice.²³ By statute, both the Attorney General and the department he or she supervises have “charge of all [state] criminal proceedings.”²⁴ As the Attorney General’s “assistants,” deputy attorneys general make prosecutorial decisions because, by appointing them, the Attorney General confers that power upon them.²⁵ In fact, indictments presented during your tenure by these deputies invoked the authority of your name. Given this control over criminal prosecutions and ultimate responsibility for the acts and decisions of deputy attorneys general, it follows that the knowledge and action of these deputies are imputed to the Delaware Attorney General.²⁶ As a result, the officially authorized decisions and actions of the Attorney General’s assistants are analytically indistinguishable from the decisions and actions of the Attorney General.

This link between decisions of the assistants and those of the Attorney General leads to the conclusion that a judge is disqualified from presiding over criminal cases that were filed by deputy attorneys general, without input from the Attorney General, during the judge’s tenure in that office. As we note elsewhere, a decision to file a criminal charge, *e.g.* to seek an indictment, represents a prosecutor’s belief in the defendant’s guilt. Since this belief is attributable to the Attorney General, it follows that filing criminal charges signifies the Attorney General’s belief in the defendant’s guilt. Such belief is inconsistent with judicial impartiality.

Our conclusion is consistent with the vast bulk of authority that has addressed this question. In *Indiana Advisory Opinion 3-89*, the Commission of Judicial Qualifications

²³ DEL. CODE ANN. tit 29, § 2502 (2003).

²⁴ *Id.* at § 2504 (6).

²⁵ *See id.* at § 2505 (d) (Supp. 2006)(authorizing the Attorney General to appoint assistants and to designate their powers, duties, and responsibilities).

²⁶ *United States v. Arnpriester*, 37 F.3d 466, 467 (9th Cir. 1994)(applying to a former United States Attorney the doctrine of “vertical imputation” that attaches to the head of a governmental office).

adopted a *per se* rule disqualifying a judge from presiding over any criminal proceeding filed or pursued by the prosecuting attorney's office during the judge's term as prosecuting attorney despite that the judge did not actively prosecute the case and had no recollection of it.²⁷ The Commission justified this result, in part, by noting, "All cases must be tried before an impartial and disinterested tribunal which should also *appear* to be fair and will preserve the public's confidence in the independence of the judiciary."²⁸

Similarly, in *Bradshaw v. McCotter*, a federal Court of Appeals concluded that "in the eyes of the public the impartiality of justice is shattered" where a state appellate judge sat on the appeal of a criminal conviction where his name appeared as "State Prosecuting Attorney," a position the judge formerly held, on a brief submitted by a county prosecutor.²⁹ The fact that the judge had not, in that former capacity, actually participated in the prosecution was immaterial.

Finally, despite no personal involvement in any active capacity, a Michigan prosecutor who became a judge was disqualified from presiding in any criminal matter in which that judge had acted as the lawyer for the government.³⁰ The result flowed from state law that designated the prosecutor as the lawyer for the state in all criminal cases in the prosecutor's county.

For purposes of this advice, we adopt the following definition. A prosecution, criminal case, or criminal proceeding is filed when the Delaware Department of Justice

²⁷ *Indiana Advisory Opinion 3-89*. See also *Michigan Advisory Opinion JI-34* (Dec. 21, 1990)(concluding based on court rules substantially identical to Rule 3C(1) of the DELAWARE JUDGE'S CODE OF JUDICIAL CONDUCT that a prosecutor who becomes a judge is disqualified in any criminal matter in which that judge had acted as a lawyer for the government despite that the prosecutor was not personally involved in any active capacity). See also *New York Advisory Opinion 89-117* (Oct. 24, 1989)("a judge may not preside over a case in which the judge was the attorney of record, regardless of whether the judge personally handled the matter").

²⁸ *Id.* (emphasis in original).

²⁹ 785 F.2d 1327, 1329 (5th Cir. 1986).

³⁰ *Michigan Advisory Opinion JI-34* (Dec. 21, 1990) (basing its conclusion on court rules substantially identical to Rule 3C(1) of the DELAWARE JUDGE'S CODE OF JUDICIAL CONDUCT).

presents the first formal prosecutorial pleading designed to bring the named alleged offender before a court.³¹ In concrete terms, a criminal complaint, an information, or an indictment will constitute such a pleading. In addition, a prosecution will include those instances where a defendant is brought before the court on a felony complaint and warrant.

Investigations Commenced

The fact that an investigation was initiated during the tenure of a judge as Attorney General does not, without more, reasonably call into question the impartiality of that judge who presides over a criminal matter resulting from that investigation. Police agencies in this State may undertake investigations without the involvement of the Department of Justice. Such police-initiated investigations do not represent any evaluation of guilt or innocence by the Attorney General or by his or her deputies. Moreover, the Delaware Department of Justice may become involved in an investigation on the mere allegation of criminal conduct. Since an investigation may fail to substantiate such an allegation, commencing an investigation, unlike seeking an indictment, does not signify the Attorney General's belief that the target of the investigation is guilty. As a result, we conclude that an investigation commenced during a judge's tenure as Attorney General will not, for that reason alone, compel disqualification.

We recognize two exceptions, however, to this general advice. The first exception arises where the judge has had personal and substantial involvement in the investigation. The second exception results where an Attorney General's subpoena was issued during the course of the investigation.

³¹ *Id.*

Personal and substantial involvement in an investigation invariably imparts personal knowledge of potentially disputed facts and thus forms a specific ground for disqualification.³² More importantly, by participating personally and substantially in an investigation, a judge will have served, as Attorney General, in government employment and in that role will have participated as counsel or advisor concerning the investigation. This participation disqualifies the judge from presiding over certain criminal proceedings on criminal charges that may result from the investigation.³³

We use the term “personal and substantial participation” here in the context of evaluating judicial disqualification. The meaning of that phrase must consequently depend on the values judicial disqualification serves. The primary value of judicial disqualification is preserving public confidence in the administration of justice.³⁴ To promote this end, *United States v. DeLuna*, applying a federal statute substantially identical to Canon 3C(1)(e), reasoned that “[d]isqualification is appropriate only if the facts provide what an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality.”³⁵ “Personal and substantial

³² See DELAWARE JUDGE'S CODE OF JUDICIAL CONDUCT, Canon 3C (1) (a).

³³ See *id.* at Canon 3C (1) (e). See also *Michigan Advisory Opinion JI-34* (Dec. 21, 1990)(concluding that “a former chief prosecutor would not be disqualified from hearing a case that was being investigated while the judge was chief prosecutor if the judge was not personally and substantially involved in that investigation”). But see *United States v. Arnpriester*, 37 F.3d 466, 467 (9th Cir. 1994)(concluding, on the basis of federal statutes substantially identical to Canon 3C, that a federal judge should recuse himself because as the United States Attorney he was imputedly “responsible for the investigation of a person suspected of violation of the laws of the United States” and “would reasonably be believed not to be impartial when that person was subsequently indicted, tried and convicted”).

³⁴ *Michigan Advisory Opinion JI-34* (Dec. 21, 1990).

³⁵ 763 F.2d 897, 907 (8th Cir. 1985)(applying 28 U.S.C. 455), *overruled on other grds by United States v. Inadi*, 475 U.S. 387 (1986). See also *In re Kensington Int'l, Ltd.*, 386 F.3d 289, 301 (3rd Cir. 2004) (whether a reasonable man, were he to know all the circumstances, would harbor doubts about the judge's impartiality).

participation” is participation sufficient to provide an objective member of the public with a reasonable basis for doubting judicial impartiality.³⁶

The second exception compels disqualification where the investigation included the issuance of an Attorney General’s subpoena. The Attorney’s General’s subpoena invokes the statutory authority of the Attorney General. It issues over the signature of and is returnable to the Attorney General. The issuance of the subpoena provides a reasonable basis for questioning the impartiality of a judge presiding over a matter in which that judge’s authority as a former Attorney General was invoked to issue the subpoena. The issuance of a subpoena, at a minimum, constitutes a special instance of direct and substantial participation in an investigation. More significantly, presiding over a criminal case the investigation of which included the issuance of such a subpoena may necessitate a ruling on the validity of the subpoena. The subpoena is, after all, only enforceable by a court.³⁷ But ruling, as a judge, on the validity of an investigative device that invoked the authority bestowed upon the judge as Attorney General subjects the judge to reasonable questions concerning his or her impartiality. For these reasons, we conclude that Canon 3C disqualifies a judge from presiding over a matter resulting from an investigation that included, during that judge’s tenure as Attorney General, the issuance of an Attorney General’s subpoena.

Proceedings Covered by Disqualification

You have asked whether it is appropriate for you to preside over specific proceedings that may occur in a criminal case. Without responding as to each specific procedure, we think that you are disqualified, except for specific proceedings identified

³⁶ See *Michigan Advisory Opinion JI-34* (Dec. 21, 1990)(listing examples).

³⁷ *In re Henry C. Eastburn & Son*, 147 A.2d 921 (Del. 1973).

below, from handling any proceeding in a criminal matter where, based on the criteria set out in this opinion, your impartiality may be reasonably questioned.

Certain proceedings are so removed from the original criminal matter, however, that presiding over them does not, in our view, give rise to reasonable questions concerning impartiality. Absent some actual bias or prejudice against the offender or substantial involvement in the original case, presiding over a violation of probation hearing is such a proceeding. Whether or not an offender has violated probation turns on an evaluation of circumstances distinct from those that gave rise to prosecution of the offense, the conviction of which resulted in the offender being sentenced to probation. Since such considerations are removed from the underlying criminal charge, presiding over a probation violation proceeding where the underlying offense was filed during your tenure as Attorney General does not raise reasonable questions of your impartiality.

A habitual offender finding involves considerations that may or may not implicate actions taken during your tenure as Attorney General. Assuming that none of the qualifying offenses are challenged and in the absence of bias or prejudice, presiding over a petition to have a defendant declared a habitual offender does not raise reasonable questions of judicial impartiality.

Finally, we do not believe, absent bias or prejudice, you are disqualified from presiding over any proceedings in a criminal matter against a defendant who was prosecuted on some unrelated criminal matter while you served as Attorney General. Simply because a judge has some knowledge concerning a defendant's criminal history

does not reasonably suggest that the judge cannot be impartial concerning current charges.³⁸

Conclusion

We conclude that the Delaware Judge's Code of Judicial Conduct prohibits a judge from presiding over criminal proceedings on charges filed when that judge was the Attorney General. In addition, we conclude that a judge is disqualified from presiding over criminal proceedings on charges that resulted from investigations in which the judge was personally and substantially involved or in which an Attorney General's subpoena was issued.

For the Committee:

Sheila G. Blakely
Deputy Chief Magistrate
Justice of the Peace Court

cc: Liaison Justice
Members of the Judicial Ethics Advisory Committee

³⁸ See, e.g., *United States v Di Pasquale*, 864 F2d 271 (3rd Cir. 1988).