

# SUPREME COURT OF LOUISIANA

NO. 96-O-2116

## *IN RE JUDGE HENRY H. LEMOINE, JR.*

### ON RECOMMENDATION FOR DISCIPLINE FROM THE JUDICIARY COMMISSION OF LOUISIANA

#### **Victory, J., concurs**

While I agree with the majority that Judge Lemoine violated C.Cr.P. art 671 in failing to recuse himself in the 20 criminal cases, I disagree with the majority's conclusion that a judge may not be subject to discipline for failure to recuse himself in a civil case under the Code of Judicial Conduct prior to the July 1996 amendment.

According to the majority's rationale, a judge in a civil case that "is biased, prejudiced, or personally interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys to such an extent that he would be unable to conduct fair and impartial proceedings" need not recuse himself from the case and failure to recuse himself in such a case is not sanctionable, ethical misconduct. C.C. P. art. 151(5). This is similarly true for a judge's failure to recuse himself in any of the other enumerated instances found in Art. 151.<sup>1</sup>

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<sup>1</sup>Thus, a judge could also not be subjected to discipline for his refusal to recuse himself where:

1. He has been employed or consulted as an attorney in the cause, or has been associated with an attorney during the latter's employment in the cause;
2. At the time of the hearing or 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;
4. Is the spouse of a party, or of an attorney employed in the cause; or is related to a party, or to the spouse of a party, within the fourth degree; or is related to an attorney employed in the cause; or to the

The majority concludes by holding that Judge Lemoine’s failure to recuse himself in the 21 criminal cases violated C.Cr.P. art. 671 and thus Canons 1 and 2.

According to the majority:

Canon 1 tells us that an ‘independent and honorable judiciary is indispensable to justice in our society,’ and that “a judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary be preserved.” Canon 2 instructs that 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.”

Despite Art. 151's permissive language, I fail to understand how the principles enunciated in Canons 1 and 2 are any less violated in a civil case in which a judge fails to recuse himself. Accordingly, I would hold that a judge’s failure to recuse himself in any of the Art. 151 instances could be, depending on the facts and circumstances, a violation of Canons 1 and 2 of the Code of Judicial Conduct.

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spouse of the attorney, with the second degree; or

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6. Would be unable, for any other reason, to conduct a fair and impartial trial.