



# DISTRICT COURT RECUSAL GUIDELINES

## Section 217 District Court Act 2016

### 1. Introduction

1.1 The Chief District Court Judge, Principal Family Court Judge and Principal Youth Court Judge have conferred with our senior Judges of the District Court and have agreed on some administrative guidelines outlining processes to determine issues about recusal. The processes described are intended only as guidance. Decisions about recusal are very fact specific and the particular case will depend on the facts and circumstances specific to the case in question.

### 2. Guiding Principle

2.1 The guiding principle is that a Judge is disqualified from sitting if in the circumstances there is a real possibility that in the eyes of a fair-minded and fully informed observer the Judge might not be impartial in reaching a decision in the case.

2.2 The test is a two-step one requiring consideration of:

- a. What are the circumstances relevant to the possible need for recusal because of apparent bias?
- b. Whether those circumstances lead to a reasonable apprehension the Judge may not be impartial.

2.3 The test requires ascertainment of, first what it is that might possibly lead to a reasonable apprehension that the Judge might decide the case other than on its merits and, secondly, whether there is a logical and sufficient connection between those circumstances and that apprehension.

### 3. Process

3.1 Where application is made for a Judge to recuse his or herself, that application will be determined in open court and reasons for the decision will be delivered in the usual manner.

3.2 Where a Judge independently of the parties realises that there is some matter concerning his or her prospective involvement which may mean he/she should recuse him/herself the Judge will stand aside and where appropriate deliver reasons in open court or otherwise issue a minute containing reasons for that decision.

- 3.3 Where the issue is not clear cut, the Judge should consult at that point with the Chief District Court Judge or relevant Principal Court Judge or other senior judge. If, after that discussion, the Judge concerned is satisfied there is a real possibility he or she cannot act impartially or is satisfied that a fair-minded and fully informed observer might reach that view, the Judge will recuse him/herself.
- 3.4 In any other case, after such discussions, the Judge will where appropriate raise in open court or otherwise issue a minute addressed to the parties drawing their attention to the relevant circumstances, inviting them to indicate if they have any views on whether the Judge should preside over the hearing. In either case counsel will be asked for their views and invited, in particular, to draw the Judge's attention to any additional matters thought relevant. If a party objects to the Judge sitting, counsel should say so, setting out the reasons for the objection. Any minute should set a time for response by the parties.
- 3.5 If an objection is received the Judge may call for submissions and hear the parties, before issuing a decision giving reasons for the recusal or not as the case may be.