

**STATE OF MAINE  
PROBATE COURT**

CUMBERLAND, ss.

Docket No. 2015-0544

*In Re: ESTATE OF  
ELEANOR G. POTTER*

**ORDER OF RECUSAL**

*The above captioned matter commenced as an informal probate and appointment of a personal representative under a will. Annemarie Germain, the applicant and person named as personal representative in the decedent's will, was issued Letters of Authority by the Register of Probate on April 22, 2015.*

*On August 19, 2015, Victoria Lynch and Helene Levy, both representing that they are step granddaughters of the decedent, filed a Petition to Discover Under 18-A M.R.S.A. Sec. 3-110 in the Probate Court. The petition was filed through their attorney James E. Mitchell of Jim Mitchell and Jed Davis, PA in Augusta, Maine. Annemarie Germaine, individually and as personal representative, moved to dismiss the Petition to Discover on September 11, 2015. Thus, the matter is now a formal contested proceeding in the Cumberland County Probate Court.*

In Maine, an attorney is elected in each county to serve a four year term as probate judge. In most cases, probate judges also maintain a law practice during their term as probate judge. Attorney James E. Mitchell is currently serving a term as the Kennebec County Probate Judge. In addition to representing the step granddaughters in their Petition to Discover, Mr. Mitchell submitted his own affidavit supporting the petition, in which he concludes, after reviewing certain medical records of the decedent, that the records raise a suspicion that Eleanor Potter was exploited by others. For the following reasons, I disqualify and recuse myself from this proceeding.

As members of the judiciary, the performance of probate judges is subject to Maine's Code of Judicial Conduct as it was revised effective September 1, 2015. Within the first Canon of the Code is the Rule that "[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary; shall avoid impropriety; and should avoid the appearance of impropriety." M. Code Jud. Conduct Canon 1, R. 1.2. The Advisory Notes to the Rule indicate that judges should avoid conduct that appears to compromise confidence in the judiciary, and the test for appearance of impropriety is whether the conduct would create in reasonable minds the perception that a judge engaged in conduct that reflects adversely on the judge's

honesty, impartiality, temperament, or fitness to serve as a judge. Also within the first Canon is Rule 1.3, which directs that a judge shall not "...convey or permit others to convey the impression that any person or organization is in a special position to influence the judge." M. Code Jud. Conduct Canon 1, R. 1.3.

When an attorney who is also an acting probate judge appears before me in a contested proceeding, I believe it raises the intimation of an appearance of impropriety as delineated within Canon 1 of the Code of Judicial Conduct. In the course of serving their terms, probate judges may attend meetings and seminars together to become better informed in their roles and to improve the workings of the probate courts. They may also confer with one another electronically regarding probate matters. It would be unrealistic to suppose that a probate judge appearing as an attorney in a contested matter in a probate court does not bring into existence a tension that could appear to compromise the impartiality of the presiding probate judge. For these reasons I find it necessary to *sua sponte* disqualify and recuse myself in this proceeding as my impartiality might reasonably be questioned. *See* M. Code Jud. Conduct Canon 2, R. 2.11(A).

My interpretation of the directives found within the Maine Code of Judicial Conduct may or may not be shared by others. It is, of course, up to each individual sitting probate judge to decide on what is the proper course when

presented with another probate judge appearing before him or her.

Dated: February 2, 2016

Joseph R. Mazziotti  
Joseph R. Mazziotti,  
Judge of Probate

Joseph Mazziotti  
Falmouth  
LD 1766

Dear Senator Anne Carney and Representative Amy Kuhn, co-Chairs and Members of the Judiciary Committee.

My name is Joe Mazziotti. I am a resident of Falmouth, Maine, have practiced law since 1978, and was the Cumberland County Probate Judge from 2014 through 2018.

I write in support of the passage of LD 1766 now pending before your Committee.

The current system of elected part time probate judges has long outlived its intended purposes and is anachronistic to today's judicial demands. I have long held the belief that permitting attorneys who also serve as probate judges, to practice before fellow probate judges undermines the public's confidence in an impartial tribunal. I have attached a copy of a Recusal Order I entered in a matter which specifically addresses these concerns.

The public's respect and belief that everyone will be accorded equal standing before any or our courts is fundamental to a functional judiciary. The Probate Court is no different.

Thank you for your time.  
Respectfully,