

tion. The sole prerequisite to appointment of counsel is the filing of a compliant petition. Once counsel, if requested, has been appointed, the trial court may proceed to determining whether petitioner has made a prima facie showing of eligibility for relief. At this stage of the proceedings, counsel and the court can and should make use of the record of conviction. That record will allow the court to distinguish petitions with potential merit from those that are clearly meritless. Here, the trial court erred in proceeding with its prima facie review of Lewis' petition without having appointed counsel. The court remanded to the court of appeal to determine whether that error was prejudicial. Groban, J., joined by Cantil-Sakauye, C.J., and Corrigan, Liu, Cuéllar, Kruger, and Jenkins, JJ.

Judges

Temporary judge violates both court rules and ethical canons by failing promptly to disclose any potential conflicts that arise during his or her tenure (Perluss, P.J.)

Jolie v. Superior Court (Pitt)

C.A. 2nd; July 23, 2021; B308958

The Second Appellate District granted a petition for writ of mandate. The court held that a privately compensated temporary judge violated both the California Code of Judicial Ethics and the California Rules of Court by failing to make ongoing disclosures of potential conflicts.

Angelina Jolie and William Bradley Pitt agreed to have their dissolution proceedings heard before Judge John Ouderkirk, a privately compensated temporary judge. In January 2017, prior to his appointment as temporary judge in the case, both Judge Ouderkirk and his alternative dispute resolution provider, Alternative Resolution Centers (ARC), made disclosures regarding privately compensated matters in which Judge Ouderkirk had been involved and in which either Jolie's or Pitt's attorney had served as counsel for one of the parties. In July 2020, with the proceedings still ongoing, Jolie's attorney contacted ARC to inquire about any new matters in which Judge Ouderkirk had been retained in which Pitt's counsel or co-counsel was also involved. ARC identified two new matters, as well as a 2017 case that had not previously been disclosed, and a previously disclosed case in which a hearing had been held in 2019. Jolie's attorney then contacted Judge Ouderkirk directly to ask for additional details. According to Judge Ouderkirk, one of the newly disclosed cases was a single-issue custody matter that had begin in 2019, ended in February 2020, and required only "a few hours of court time." As to the other newly disclosed case, Judge Ouderkirk explained that, although his involvement began in 2017, Pitt's cocounsel did not substitute in as one of the many attorneys in that case until December 2020.

In August 2020, after received Judge Ouderkirk's reply, Jolie asked him to recuse himself based on the undisclosed ongoing professional relationships with Pitt's counsel. He refused. Jolie then filed a statement of disqualification in the superior court. The superior court denied disqualification.

The court of appeal reversed, holding that Judge Ouderkirk failed to comply with his continuing ethical obligation to disclose professional relationships with the parties or their counsel. Canon 6(D)(5)(a) of the California Code of Judicial Ethics requires a temporary judge to disclose information reasonably relevant to the question of disqualification, specifically including personal or professional relationships with a lawyer in the current proceeding, "from the time of notice and acceptance of appointment until termination of the appointment." This is thus a continuing obligation. That Judge Ouderkirk eventually disclosed previously undisclosed matters in response to counsel's inquiry was insufficient. Although a temporary judge's disclosure obligation continues for the duration of his or her appointment, that does not mean, as Judge Ouderkirk suggested, that the disclosure may be made at any time during the judge's tenure. To the contrary, Rule 2.831 of the Cal. Rules of Ct. mandates that any required disclosure be made "as soon as practicable." Judge Ouderkirk's additional assertion that the matters at issue were simply "overlooked in the administrative process" was similarly unavailing. First, it reflected an attempt to lay blame on ARC or its administrative staff for an obligation that was solely his own. Further, no database search, sophisticated record compilation, or other administrative action was required for Judge Ouderkirk to become aware of his participation in two new matters in which Pitt's counsel represented one of the parties. Finally, the record belied Judge Ouderkirk's claim that the new matters would have been disclosed had they not simply been overlooked. To the contrary, it was Judge Ouderkirk's and ARC's practice to provide disclosures only at the initiation of an engagement or when new counsel substituted into a case, not whenever a new event occurred requiring disclosure under canon 6. That practice does not comply with a temporary judge's ethical obligations. Because a person aware of the facts might reasonably entertain a doubt as to Judge Ouderkirk's impartiality, disqualification was required. Justice Segal concurred, writing separately to question the wisdom of allowing temporary judges to be privately compensated.