

# *Children's Law Center of Indiana*



## **Adoption (Ethics)**

1/19/2018

In L.G. v. S.L., 88 N.E.3d 1069, 1074 (Ind. 2018), the Court reversed only one portion of the Court of Appeal's opinion in 76 N.E.3d 157 (Ind. Ct. App. 2017), and held that the trial court judge was not required to recuse himself because counsel for a party to a case served as a professional reference and wrote a letter of recommendation. The Court further held that the trial court judge was not required to recuse himself on remand just because he had made findings against Father, as the findings did not amount to an opinion on the merits of the adoption proceeding. *Id.*

Adoptive Parents sought to adopt the child without Father's consent, alleging unfitness, and Father contested the adoption. After several litigated discovery disputes, the trial court entered an order dismissing Father's motion to contest the adoption with prejudice and concluding that Father's consent to the adoption was implied by statute. The trial court's order included findings and conclusions that: (1) Father's course of frivolous objections to the production of his mental health records was designed to impede the ability of Adoptive Parents to try the case; (2) Father failed, without justification, to appear for his deposition; and (3) Father had not shown good cause why his motion to contest the adoption should not be dismissed for failure to appear at the deposition, failure to appear at the hearing, and failure to provide complete discovery. The trial court found that Father had failed to prosecute his motion to contest the adoption and that IC 31-19-9-12(2) provides that a putative father's consent to adoption is irrevocably implied without further court action if he fails to appear at the hearing to contest the adoption. During the time the adoption litigation was pending, the trial court judge applied for appointment to the Indiana Supreme Court, and listed counsel for Adoptive Parents as a professional reference. As part of his application, the trial court judge was required to give names of three attorneys who had been professional adversaries or had litigated substantial cases in his court. Adoptive Parents' counsel also wrote a favorable letter of recommendation for the trial court judge's application.

The trial court granted the adoption, and Father appealed. The Court of Appeals, at 76 N.E.3d 157, 170, 171, 174, 177 (Ind. Ct. App. 2017), reversed the trial court's order dismissing Father's motion to contest the adoption and held that: (1) the trial court's dismissal of Father's motion to contest adoption because of Father's failure to provide complete discovery of his mental health records without undue delay was not supported by the evidence and was clearly erroneous; (2) the trial court erred when it based its dismissal of Father's motion to contest the adoption on Father's failure to appear in person at the motions hearing; and (3) the trial court judge should

recuse himself upon remand. The Indiana Supreme Court granted transfer, but only for the limited purpose of vacating the section of the Court of Appeals opinion addressing the issue of whether the trial court judge should recuse himself upon demand. L.G., 88 N.E.3d at 1070 (Ind. 2018).

**The trial court did not abuse its discretion by denying Father's Motion to Reuse Judge, which was based on opposing counsel to Father writing a letter of recommendation and serving as a professional reference for the trial court judge.** Id. at 1071, 1073. Indiana Trial Rule 79(C) provides that certain relationships that are familial in nature can disqualify a judge and require the recusal of the judge. Id. Indiana Code of Judicial Conduct Rule 1.2 provides that a judge must act in all times in a manner that promotes public confidence in the judiciary, and requires that a judge avoid all impropriety and appearance of impropriety. Id. Lastly, Rule 2.11 requires that judge disqualify himself or herself in a proceeding when the judge's impartiality might reasonably be questioned. Id. Comment 1 to this Rule explains that a judge is disqualified whenever his or her impartiality might reasonably be questioned, even if the situation does not fit under the named provisions in the rule. Id. While case law holds that the mere appearance of bias and partiality may require recusal if an objective person with knowledge of the circumstances would have a rational basis for doubting a judge's impartiality, the Court opined that the facts of this case were different from prior case law. Id. at 1071-2. The Court noted that this was not a partisan election, it was a merit-based selection process, and the letter of recommendation from the attorney was a fulfillment of the requirement that a reference be submitted from an attorney who had litigated in front of the judge. Id. at 1072. The Court also noted a non-precedential case, Indiana Gas Co. v. Indiana Fin. Auth., 992 N.E.2d 678 (Ind. 2013), where Judge Massa stated that it would be disabling to the Court if every time a "friend" appeared before the Court as a lawyer, judges were required to recuse themselves. L.G. at 1072. The Court ultimately concluded that the attorney's kind and flattering recommendation letter for the trial court judge was not enough to require recusal for the following reasons: (1) such a policy would be disabling to courts; (2) the suggestions that the trial court judge was prejudiced in some manner was based on mere speculation; and (3) recusal was not required by the Indiana Trial Rules or the Indiana Code of Judicial Conduct. Id. at 1072-3.

**The trial court judge was not required to recuse himself on remand merely because he had ruled against Father; adverse rulings and findings of fact by a trial court are not a sufficient reason to believe a judge has a personal bias or prejudice.** Id. at 1073. The Court noted prior case law establishes that personal bias or prejudice cannot be automatically assumed from adverse ruling by a trial court judge, such that recusal is required upon remand. Id. The Court also opined that the law assumes that judges are unbiased, and specifically that Indiana courts assume that judges have the ability to remain impartial and objective, even if they have been exposed to information which could otherwise prejudice lay persons. Id. In order to overcome this presumption, a party must establish that the judge has personal prejudice regarding a party, and this prejudice only exists where there is "an undisputed claim or the judge has expressed an opinion on the merits of the controversy before him." Id. In L.G., the trial court noted that it found Father to not be a credible witness, and consequently, the Court of Appeals opined in its order that the trial court judge should recuse himself due to lack of impartiality. Id.

The Indiana Supreme Court disagreed with this determination, noting that it is the fact-finder's responsibility to assess witness credibility; logically, there was nothing unusual or inappropriate in the trial court's doing so. *Id.* While some of the trial court's language was strong, such as characterizing a motion as frivolous, it was not enough to lead to a presumption of prejudice or bias, especially as the trial court did not express an opinion on the merits of the case. *Id.* Father's motion to contest the adoption was dismissed due to a discovery dispute, and the merits of his motion to contest the adoption were not reached, considered, or discussed by the trial court; therefore, there was no need for the trial court judge to reuse himself. *Id.* at 1074.