

New Jersey Judge in Hot Water Over Tomato Comment

By [Donald Scarinci](#)

Referring to the spouses as "tomatoes" is enough to remove a judge from a divorce case, even if he also happens to be Italian. Superior Court Judge Philip Maenza was recently forced to recuse himself from a [New Jersey divorce case](#) after one of the parties complained about his analogy.

Tobia Ippolito requested a new judge after he interpreted Maenza's characterization of he and his wife as "the tomatoes in the case" as an anti-Italian insult. He also alleged that the judge called him a "jerk" during a conversation with a sheriff's officer.

In his defense, Maenza said he was referring to someone else during the courtroom conversation. He further explained that he "attempted to find 'common ground' with the litigants in an effort to explain the very difficult and complex process of divorce litigation and used a tomato analogy to make the point that divorce is ultimately distilled down to the basic facts upon which the court applies the law."

Under [New Jersey law](#), the litigants can seek to remove a judge for a case or the judge can do it on his or her own accord. Some of the most common reasons for recusal include:

- The judge is closely related (second cousin or closer) to one of the parties or attorneys in the matter;
- The judge has been attorney of record or counsel in the action;
- The judge has given an opinion upon a matter in question in the action; and/or
- The judge is interested in the event of the action.

The law also has a "catchall" for situations in which there are other reasons which "might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so."

In most cases, judges are essentially allowed to "judge" themselves when it comes to motions to recuse. The rationale is that the judge has the most knowledge regarding the facts supporting or refuting an objective ground for recusal, such as a relationship between the judge and one of the lawyers. In cases that raise subjective objections, such as bias, the reasoning is that the judge has the "best insight to his or her mind."

In this case, Maenza appears to believe that he adhered to his ethical obligations. However, he decided to recuse himself anyway in order to avoid any further questions about his impartiality.

As Maenza explained in his decision, "the mere appearance of bias in a judge – however difficult, if not impossible, it is to quantify – is sufficient to erode respect for the judiciary."

"It is more vital to maintain the public confidence in our system of justice than for this judge to sit on this case," he added.

