



JÖNKÖPING UNIVERSITY

Rules relating to disqualification at Jönköping University

Title: Rules relating to disqualification at Jönköping University

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1. Purpose

Disqualification Rules are one means of ensuring the principle of objectivity, i.e. that objectiveness and impartiality are observed and that everyone's equality before the law is considered.

The purpose of the Disqualification Rules is to:

- Control how the work at JU is organised and run to guarantee the objective and impartial handling of matters, during preparation, presentation and when adopting a position.
- Reassure those affected and the general public that the above will be the case.

2. Legal situation

The Administrative Procedure Act (1986:223) includes provisions concerning disqualification for public authorities. JU is not subject to this Act, which consequently means that disqualification in JU's general handling is not legally regulated separately as is the case, for example, for a government education provider. However, JU has chosen to apply the provisions contained in Clauses 11 and 12 through an equivalent arrangement. However, exemptions from the Rules may be decided if there are exceptional grounds for doing so. (Exceptional reasons include in the first instance the need to have exclusive competence of great importance to the processing of a matter.) Such a decision (in the same way as notification of disqualification) shall be entered in the minutes in conjunction with the processing of the matter.

3. Scope of the Rules

The Disqualification Rules encompass everyone processing a matter, which includes both those preparing the matter and those participating in the final processing of the matter (decision making). Decision-makers and administrative officers at different levels within JU must always observe objectivity when handling matters whose outcome they could influence. For example, this applies within the operation to decisions concerning appointments, allocation of funds, admissions, examinations and disciplinary sanctions. The issue of disqualification is also important for procurement matters and the like. What is decisive here is whether the person may have been involved in the matter in such a way that he or she may be considered to have affected the outcome. A person who only performs purely office tasks (such as copying and mailing) is not encompassed by the Disqualification Rules even if such person were to be affected by the matter.

Special Disqualification Rules for to the board members and managing directors of each company and employee representatives are provided below under Clause 7.

Responsibility for compliance with the Disqualification Rules lies with each company within JU and also with individual administrative officers.

4. Grounds for disqualification

The following grounds for disqualification apply at JU. The legal effects of disqualification are described in more detail in Clause 10.

4.1 Disqualification due to ownership, interest and kinship

Disqualification due to ownership, interest and kinship means that the person charged with handling a matter is disqualified:

- if the matter concerns the person him or herself, their husband/wife, parents, children, siblings or someone else who is closely related to the person
- if the person or someone closely related to the person may expect an extraordinary advantage or detriment from the outcome of the matter.

4.2 Disqualification of a legal representative

Disqualification of a legal representative means that the person charged with handling a matter is disqualified:

- if the person or anyone closely related is the legal representative of someone that the matter concerns
- if the person or anyone closely related to him is the legal representative of anyone that may expect extraordinary advantage or detriment from the outcome of the matter.

4.3 Disqualification due to a dual instance

Disqualification due to a dual instance may arise:

- if the matter has been raised within JU through appeal and when someone had participated in the matter's handling at a preceding level.

4.4 Disqualification of a representative or assistant

Disqualification of a representative or assistant means that the person charged with handling a matter is disqualified:

- if the person brought the action as a representative or assistant in return for payment in a matter.

4.5 Disqualification for reasons of discretion or delicacy

Disqualification for reasons of discretion or delicacy means that the person charged with handling a matter is disqualified:

- if there is otherwise any special circumstance that is likely to undermine confidence in the person's impartiality in the matter and that is not included in the above-mentioned categories of disqualification.

Examples of disqualification for reasons of delicacy are:

- Close cooperation in a professional sense
- Clear friendship or enmity
- State of dependence of a financial nature
- Manager-employee relationship
- Involvement in the matter in such a way that a suspicion may arise concerning impartiality

5. Safety valve

Even if disqualification formally prevails, the circumstances in exceptional cases may be such that disqualification can be disregarded. However, this requires the issue of impartiality to be obviously of no importance. For example, a purely routine matter or a matter that is completely uncontroversial.

6. Specific information about disqualification in research situations

Disqualification may arise in conjunction with decisions that rely on an expert assessment of an individual researcher's or research student's academic work. This includes, for example, experts for appointment matters, experts in conjunction with the assessment of research projects and members of examining committees for doctoral studies.

Disqualification applies for the person who is to carry out the assessment in the event there has been academic cooperation or co-production with the person whose academic work is to be assessed over the past five-year period. One joint article is sufficient to be regarded as co-production. Disqualification may also apply for a period of more than five years if there has been longstanding cooperation. Exemptions from the five-year rule may be made, which are to be considered from case to case. The individual situation must be assessed on the basis of both the nature and scope of the circumstances and the period involved.

As regards a doctoral student-supervisor relationship, this is considered as disqualification regardless of how far back in time the cooperation took place.

7. Specific information about disqualification for board members, managing directors (MDs) and employee representatives

In addition to the general rules on disqualification, the disqualification provisions contained in Chapter 8, Section 23 of the Swedish Companies Act (2005:551) are to be observed by board members. These rules should also be applied for the MD of each company.

These provisions mean that a board member/MD may not be charged with handling a matter concerning

- an agreement between the board member/MD and the company,
- an agreement between the company and a third party if the board member/MD in question has a significant interest that may conflict with the interests of the company, or
- an agreement between the company and a legal person that the board member/MD alone or together with someone else may represent.

An exemption from the last-mentioned example above applies if the company's counterparty is a legal person that forms part of the Jönköping University Foundation's group.

'Agreement' shall be equated with litigation or other proceedings.

Separate supplementary rules apply for employee representatives; see Section 14 of the Board Representation (Private Sector Employees) Act (1987:1245). These rules mean that employee representatives may not participate in the handling of issues relating to collective bargaining agreements or industrial action or in other issues where the union organisation has a significant interest that is contrary to the interests of the company. Furthermore, an employee representative is prevented from participating in decisions relating to issues concerning employee benefits.

8. Notification of disqualification

There is an obligation to notify disqualification on one's own volition, i.e. a person who knows of any circumstance that might entail their disqualification is obliged to raise the issue of any disqualification on their own volition. Others involved in the handling of the matter can also raise the issue if there is any factor entailing disqualification. An objection concerning disqualification must be entered in the minutes. (For a board member of the Jönköping University Foundation this is also regulated by item 11 of its Rules of Procedure.)

Circumstances that might possibly constitute disqualification should be discussed in an open spirit. This open spirit ensures objectivity and impartiality when handling the matter and also reassures the surrounding world that this will be the case.

9. Consideration of disqualification

If an issue of disqualification has been raised in relation to someone and a replacement cannot be made, a formal decision concerning the issue of disqualification shall be made as soon as possible within JU. A decision is to be made by the President or the person appointed by the President in the individual case. If the disqualification issue applies to the President or another board member, the board shall decide on the disqualification issue and the member affected shall not participate in the decision.

A person does not need to be partial for disqualification to prevail, but it is sufficient for the situation to be such that there is reason to suspect partiality for disqualification to apply.

Disqualification is to be disregarded when the question of impartiality is obviously of no importance. This only refers to matters of a purely routine nature that do not require any considerations of the nature that an issue may arise concerning partiality or impartiality. This relates in the first instance to purely administrative measures in a matter, such as the copying of documents and dispatch of decisions.

10. Appeal against disqualification

A decision concerning an issue of disqualification may only be appealed against in conjunction with an appeal against the decision by which JU determines the matter. It is therefore always important that the issue of disqualification is considered before a decision is made on the substantive issue.

11. Legal effects of disqualification

A person who is disqualified may not participate in the handling of the matter, i.e. he or she may not take any preparatory measure or participate in the assessment, discussion or decision. However, the person may take those steps that cannot be taken by anyone else without an inconvenient delay. For urgent matters that cannot be postponed, the person who is disqualified may even make a decision, if this is necessary considering time constraints. Restrictiveness shall be applied in this respect.

A person who is disqualified in respect of a matter being dealt with during a meeting should not only refrain from expressing their opinion or taking part in voting but should also leave the meeting when the matter is being discussed and a decision is to be made.

Disqualification shall be noted in the minutes. Even cases where disqualification has been considered but is not deemed to prevail must be entered in the minutes. If minutes of the meeting are not being kept, a record of the disqualification shall nonetheless be kept.

A decision made despite disqualification prevailing remains valid until such time as it may be declared invalid upon appeal concerning the substantive issue, in which connection the situation entailing disqualification is to be invoked as grounds for the appeal.