

Committee on Judicial Ethics  
Teleconference  
Thursday, March 15, 2018

Committee members present via teleconference: Judge Maureen D. Dennis (Chair), Judge Christine E. Keller (at 9:37am), Professor Sarah F. Russell, Judge Robert B. Shapiro and Judge Angela C. Robinson (at 9:39am). Staff present: Attorney Martin R. Libbin, Secretary and Attorney Viviana L. Livesay, Assistant Secretary.

**MINUTES**

- I. Judge Dennis called the meeting to order at 9:35 a.m. Although publicly noticed, no members of the public were present.
- II. Judge Dennis, Judge Shapiro and Professor Russell approved the minutes of the February 15, 2018 regular meeting.
- III. The Committee ratified **Emergency Staff Opinion JE 2018-05** concerning whether a Judicial Official may serve on the board of directors of the Girl Scouts of Connecticut (“GSC”). The GSC is a non-profit Connecticut corporation chartered by the Girl Scouts of America. According to the GSC website, the Girl Scouts are “the preeminent leadership development organization for girls” with the following mission statement: “Girl Scouting builds girls of courage, confidence, and character, who make the world a better place.” See <https://www.gsocfct.org/en/about-girl-scouts/who-we-are.html>. The GSC Board of Directors is responsible for, among other things, providing leadership, oversight and policy direction to the GSC, including fundraising strategy and development. A search of the Judicial Branch’s online case lookup revealed one pending case in which the GSC is a party. It is the Judicial Official’s understanding that membership on the GSC Board of Directors would entail a minimal time commitment.

Rule 1.2 states that a judge “should act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.”

Rule 3.1 of the Code concerns extrajudicial activities and sets forth general limitations on such activities, such as not using court premises, staff or resources, except for incidental use or for activities that concern the law, the legal system, or the administration of justice unless otherwise permitted by law, and not participating in activities that (1) interfere with the proper performance of judicial duties, (2) lead to frequent disqualification, (3) appear

to a reasonable person to undermine the judge's independence, integrity or impartiality, or (4) appear to a reasonable person to be coercive.

Rule 3.7 of the Code deals specifically with participation with educational, religious, charitable, fraternal and civic organizations and activities. It provides that, subject to the general requirements in Rule 3.1, a judge may participate in activities sponsored by or on behalf of organizations not conducted for profit including, but not limited to (a)(2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority; (a)(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity but only if the organization or entity is concerned with the law, the legal system, or the administration of justice ... (a)(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity: (A) will be engaged in proceedings that would ordinarily come before the judge; or (B) will frequently be engaged in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

This inquiry was circulated to the Committee members and their input was solicited and received. The Committee considered a similar inquiry in [JE 2015-15B](#). In that opinion, the Committee determined that a Judicial Official could serve on the executive board of a regional council of the Boy Scouts of America. The Committee's opinion was premised on the fact that the Boy Scouts of America had recently rescinded a policy that excluded individuals from leadership positions in the organization based upon their sexual orientation. Internet research has revealed that the Girl Scouts of America has not, at least in recent history, maintained a comparable policy of discrimination or exclusion. The GSC's current nondiscrimination policy prohibits discrimination on the basis of a number of protected classes, including sexual orientation and marital/civil union status.

Also relevant are the Committee's opinions in [JE 2015-22](#) (Judicial Official could serve on the board of directors of organization of non-profit public charter schools, subject to nine conditions); [JE 2014-22](#) (same for service on board of advisors to nonprofit higher education institution); and [JE 2014-18](#) (Judicial Official could serve as an officer and on Board of Directors of a non-profit country club, subject to several conditions).

Based upon the foregoing, including that the GSC is a nonprofit corporation that is not concerned with the law, the legal system or the administration of justice and that the GSC is not frequently involved in litigation in Connecticut courts, the Committee concluded that the Judicial Official may serve on the Board of Directors of the GSC, subject to the following conditions adopted

from the opinions referenced above:

1. The Judicial Official should regularly reexamine the activities of the board to determine if it is proper to continue his or her relationship with the board. Rule 1.2;
  2. The Judicial Official may not use Judicial Branch resources for activities that concern the board. Rule 3.1(5);
  3. The Judicial Official may not continue to serve on the board if the institution participates in activities that lead to frequent disqualification of the Judicial Official or otherwise becomes frequently engaged in adversary proceedings in the court on which the Judicial Official serves. Rules 3.1 & 3.7(a)(6);
  4. The Judicial Official may assist the organization in planning related to fundraising and may participate in the management and investment of its funds. Rule 3.7(a)(1);
  5. The Judicial Official may not engage in a general solicitation of funds on behalf of the organization. Rule 3.7(a)(2). The Judicial Official only may solicit contributions for the organization from members of the Judicial Official's family (as that term is defined in the Code) or from Judicial Officials over whom the soliciting Judicial Official does not exercise supervisory or appellate authority. Rule 3.7(a)(2);
  6. The Judicial Official may appear or speak at, be featured on the program of, and permit his/her title to be used in connection with an organization event, but not if the event serves a fund-raising purpose. Rule 3.7(a)(4);
  7. The Judicial Official may permit his/her name and position with the organization to appear on letterhead used by the organization for fund-raising or membership solicitation but may permit his/her judicial title to appear on such letterhead only if comparable designations are used for other persons. Rule 3.7, cmt (4);
  8. Service on the board may not interfere with the proper performance of judicial duties. Rule 3.1(1); and
  9. The Judicial Official may not solicit membership in the GSC, as the GSC is not an organization concerned with the law, the legal system or the administration of justice. Rule 3.7(a)(3).
- IV. The Committee discussed **Informal JE 2018-06**. The facts are as follows. A Judicial Official's spouse plans to run for a political office. The Judicial Official states that he/she understands that no mention may be made about the fact that he/she is a judge in the spouse's campaign materials and that the Judicial Official is barred from participating in any and all campaign activities.

It should be noted that the Judicial Official and his/her spouse share the same last name and that the Judicial Official previously held an elective office.

The Judicial Official submitted the following specific questions and i any general advice that the Committee can provide.

1. Under what circumstances, if any, may the Judicial Official's spouse use a family picture that includes the Judicial Official is his/her campaign materials?
2. Can the spouse use the Judicial Official's name?
3. Can the spouse refer to the fact that the Judicial Official used to hold an elective office?
4. The Judicial Official and his/her spouse each own a car with title held in their respective name only. May the spouse put a bumper sticker on his/her car? If the spouse does put a bumper sticker on his/her car, may the Judicial Official I use the car for incidental purposes (the Judicial Official would not drive it to work)? May the Judicial Official ride in the car?
5. The Judicial Official's house is held solely in his/her spouse's name. May the spouse post campaign signs on the property?
6. May the Judicial Official attend civic, as opposed to political, events where his/her spouse is appearing as a candidate (e.g., debates)?
7. Under what circumstances, if any, can the Judicial Official spend time with his/her family once the polls have closed on election night?

Rule 1.3 states that “[a] judge shall not use or attempt to use the prestige of judicial office to advance the personal or economic interests of the judge or others or allow others to do so.”

Rule 4.1 generally prohibits the political activities of judges. The rule states that:

- (a) Except as permitted by law, or by Rules 4.2 and 4.3, a judge shall not:
- (1) act as a leader in, or hold an office in, a political organization;
  - (2) make speeches on behalf of a political organization;
  - (3) publicly endorse or oppose a candidate for any public office;
  - (4) solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate for public office;
  - (5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;
  - (6) seek, accept, or use endorsements from a political organization;
  - (7) knowingly, or with reckless disregard for the truth, make any false or misleading statement in connection with the appointment or reappointment process;
  - (8) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or

- (9) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.
- (b) A judge shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge, any activities prohibited under subsection (a).
- (c) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

Section (4) of the Commentary to Rule 4.1 states: “Although members of the families of judges are free to engage in their own political activity, including running for public office, there is no “family exception” to the prohibition in subsection (a)(3) against a judge publicly endorsing candidates for public office. A judge must not become involved in, or publicly associated with, a family member’s political activity or campaign for public office. To avoid public misunderstanding, judges should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member’s candidacy or other political activity.

**Question (1): Under what circumstances, if any, may the Judicial Official's spouse use a family picture that includes the Judicial Official is his/her campaign materials?**

Although at least one early advisory opinion states that a family member cannot use a judge-relative’s photo in campaign material ([Alabama Advisory Opinion 82-143](#)), most state advisory committees permit the use of a judge’s photo, name and relationship in campaign literature provided he/she is not identified as a judge, he/she is not pictured in robes or in a courthouse setting, and no explicit endorsement is featured.

For example, the New York Advisory Committee has issued several opinions regarding the use of family photographs in campaign literature: [New York Opinion 17-79](#) (a judge may appear in a family photograph with his/her first-degree relative in the relative’s campaign literature, provided the judge does not wear a judicial robe and nothing in the literature identifies him/her as a judge); [New York Opinion 04-41](#) (judge may appear in a family photograph to be used in the spouse’s campaign, provided that no reference is made to the judge’s judicial title or position and the judge does not appear in a judicial robe or setting); and [New York Opinion 00-75](#) (the use in the campaign of a family photograph that includes the judge is not prohibited provided that no reference is made to the judge’s title or position).

In [New York Opinion 17-79](#), the Advisory Committee explained:

Just as it would be normal and usual for a candidate to be accompanied and therefore seen with a spouse at civic, community and other public, but not political events, during a campaign, it would be normal and usual to use a family photograph in campaign literature. To exclude the spouse-judge from the photograph would seem odd, and indeed, misleading. But to prohibit entirely any use of a photograph that includes the judge seems unnecessary, so long as proper precautions are taken. The crucial requirement, therefore, is that the photograph itself or any reference thereto, must not identify the judge by title or position. In the view of the Committee, that is a necessary condition to the use of a family photograph. Thus, in the opinion of the Committee, the use of a photograph under such circumstances, would not constitute impermissible political activity as proscribed by section 100.5 of the Rules Governing Judicial Conduct.

The Florida Judicial Ethics Advisory Committee also determined in [Florida JEAC 2017-16](#) that a judge may appear as the candidate's spouse in a family photograph to be used in the spouse's campaign. See also [Florida JEAC 2016-07](#) and [Florida JEAC 2007-13](#). In Florida JEAC 2007-13, the Committee cautioned that "the judge's office should not be mentioned and that no explicit endorsement be featured." Because the Committee cannot anticipate all the possible campaign uses of a family photograph, the Committee stated that "the Inquiring Judge must be vigilant to insure that the family photograph is not used in a way that violates Canon 7."

The Ohio advisory committee found, in [Ohio Opinion 2001-1](#), that the judge may appear in the family picture and be listed by name with or without the title "judge" in the spouse's campaign literature, but shall not be otherwise depicted in his/her official capacity in the photo. The committee noted that "[f]amily member pictures, names, and occupations are biographical information about a candidate and the candidate's family, not a prohibited 'public endorsement.'"

**Response to Question (1):** The Judicial Official's spouse may use a family picture that includes the Judicial Official in his/her campaign material provided that no reference is made to the judge's judicial title or position, the judge does not appear in a judicial robe or setting, no explicit endorsement is featured and the judge must be vigilant to ensure that the family photograph is not used in a way that violates Rule 4.1. The Committee also advised against appearing in any non-family group photo in the spouse's campaign literature because it is likely to convey a message of political support in violation of Rule 4.1.

**Question (2): Can the spouse use the Judicial Official's name?**

**Response to Question (2):** Based on the response to Question (1), the Committee determined that the spouse may use the Judicial Official's name, but should not identify the judge by title or position.

**Question (3): Can the spouse refer to the fact that the Judicial Official used to hold an elective office?**

**Response to Question (3):** Although the Code of Judicial Conduct does not prohibit reference to biographical information about a judge's former elective position, the Committee determined that, in this instance, reference to the judge's former elective position appears to constitute a political endorsement. The Committee noted that campaign literature typically uses references to, or photos of, individuals who formerly held elective positions as a way of signifying a political endorsement.

**Question (4): The Judicial Official and his/her spouse each own a car with title held in their respective name only. May the spouse put a bumper sticker on his/her car? If the spouse does put a bumper sticker on his/her car, may the Judicial Official use the car for incidental purposes (the Judicial Official would not drive it to work)? May the Judicial Official ride in the car?**

Judges are prohibited, under Rule 4.1, from publicly displaying support for a relative's candidacy. The California advisory committee stated that a judge is not obligated to take any action when a bumper sticker is placed on a vehicle that is primarily used by a family member, but should not drive the vehicle. [California Opinion 49 \(2000\)](#). If both use the vehicle, the Florida advisory committee determined that the judge may not operate an automobile solely owned by the judge's spouse which displays a sign supporting a relative who is partisan political candidate. [Florida JEAC 2006-11](#)

The New York advisory committee, however, has adopted a more flexible approach. In [New York Opinion 06-94](#), the committee determined that a judge is not prohibited from driving an automobile registered in the name of the spouse on those occasions when it is necessary or particularly convenient, where the spouse's car displays a bumper sticker supporting the spouse's candidacy.

**Response to Question (4):** The Committee concluded that the candidate-spouse may put a bumper sticker on his/her car and the Judicial Official may drive or be a passenger in the car that displays the bumper sticker, but may only do so under exigent circumstances or if the bumper sticker is temporarily covered.

**Question (5): The Judicial Official's house is held solely in his/her spouse's name. May the spouse post campaign signs on the property?**

Several judicial ethics committees have advised that, because a lawn sign implies an endorsement by both homeowners, a judge should not permit a sign endorsing a political candidate to be placed on property jointly owned by the judge and the judge's spouse.

In [Florida JEAC 2006-11](#), the Judicial Ethics Advisory Committee concluded that a judge may not authorize the placement of a campaign sign supporting a relative's candidacy for partisan political office in the yard of a residence jointly owned by the judge and the judge's spouse. Similarly in [Massachusetts Advisory Opinion 05-8](#), the committee determined that a judge may not permit his adult daughter, who shares his home but lives independently, to display a campaign sign in front of the home in support of his son's campaign, for which she is the campaign manager.

In [New York Opinion 99-118](#), the advisory committee determined that a judge should advise his/her spouse not to place signs endorsing political candidates on the house or other parts of the real property where the judge and spouse reside, even if the spouse is the sole owner of the property. See also [New York Opinion 07-169](#) reaffirming this 1999 opinion. But in [New York Opinion 06-94](#), the advisory committee determined that a judge is not obligated to discourage his/her spouse from displaying a campaign sign supporting the *spouse's own election* on the lawn of the marital residence. Although the NY Committee previously determined that a judge should advise his/her spouse not to place signs endorsing other political candidates on the marital property, the instant matter was found to be significantly distinguishable, in that it involved the spouse's campaign. The Committee stated that "the spouse is fully entitled to exercise his/her rights in support of his/her own candidacy, and at the location where he/she resides, regardless of the fact that the judge also resides there." The committee emphasized that "the political rights of a candidate for public office who happens to be married to a judge cannot be ignored."

In [Ohio Opinion 2000-1](#), the advisory committee stated that a judge may allow campaign signs promoting his spouse's candidacy to be placed on real estate they jointly own and explained: "Placement of a spouse's campaign sign on property co-owned by a judge and spouse does not constitute a 'public endorsement' by the judge."

**Response to Question (5):** Based on the facts presented, including that the house is held solely in the spouse's name and that the spouse seeks to post signs in support of his/her own candidacy, the Committee determined that the spouse may post signs on the property.

**Question (6): May the Judicial Official attend civic, as opposed to political, events where his/her spouse is appearing as a candidate (e.g., debates)?**

Although states differ on whether a judge can accompany a candidate-spouse to political events, all states seem to agree that judges may accompany a candidate-spouse to civic, social, religious, community, cultural or recreational events that are not politically sponsored, even if the spouse engages in some campaigning during the events, when the judge would have attended the event had his/her spouse not been a candidate. See [Political Activity by Members of a Judge's Family](#), C. Gray, pages 7-9). Examples of events to which a judge may accompany his/her spouse include, but are not limited to:

- Ceremonial events, e.g. portrait unveiling ceremony honoring a former governor ([JE 2013-37](#)), swearing in ceremony for elected officials ([JE 2010-37](#), [Massachusetts Opinion 99-16](#));
- A public candidates' forum that is not sponsored by a political organization or designed to garner support for one candidate, but is intended to inform the electorate about all candidates ([Massachusetts Opinion 99-16](#), [New York Opinion 00-75](#));
- A meeting of a fraternal organization ([New York Opinion 00-75](#));
- A community event at which the candidate-spouse is appearing ([Washington Advisory Opinion 02-2](#)); and
- Civic gatherings sponsored by non-political organizations to which all candidates are invited ([U.S. Advisory Opinion 53, 2009](#)).

[Massachusetts Advisory Opinion 99-16](#) sets forth some helpful questions to consider in deciding whether it is appropriate to attend a particular event:

- Why judge and spouse are attending,
- Whether the judge would have attended even if his/her spouse was not a candidate,
- Whether the event would have been held even if there was no campaign,
- Who is sponsoring event,
- What spouse plans to do at event,
- Whether spouse views the event as an opportunity to enhance his/her candidacy, and
- Whether the average citizen would perceive the event as political in nature.

**Response (6):** Judges are generally permitted to accompany a candidate-spouse to civic, social, religious, community, cultural or recreational events that are not politically sponsored. However, each situation requires an independent evaluation and the Judicial Official will be called upon to make a judgment as to whether an event is political or an appropriate civic event. In

making that judgment, the Judicial Official should consider the questions set forth in the in the Massachusetts opinion.

**Question (7): Under what circumstances, if any, can the Judicial Official spend time with his/her family once the polls have closed on election night?**

At least two advisory committees, New York and Florida, have addressed the issue of attending post-election gatherings on election night. In [New York Opinion 06-147](#), the committee determined that a judge may not attend the post-election “festivities” in a hotel where election results are tallied and the spouse will address scores of supporters and the press regarding the election. In contrast, the majority in [Florida Opinion 2014-16](#) opined that a judge’s attendance at the adult child’s post-election gathering after polls close was permissible, at least under the limited circumstances enumerated in the opinion. One member, however, concluded that the inquiring judge should not attend. The four unusual and very specific facts identified by the Florida majority included that (1) the function is intended as a typical victory party following the *completion* of the election, (2) the election was for a judicial race in which partisanship is not a factor and candidates themselves do not make endorsements, (3) the inquiring judge was not up for election or retention during the same cycle as the judge’s child, and (4) the candidate was the inquiring judge’s child.

**Response to Question (7):** Based on the foregoing, and consistent with the New York opinion and the Florida dissent, the Committee determined that the Judicial Official should not attend any post-election “festivities” after the polls close because the judge’s mere appearance at the event has the potential to convey a message of political support.

- V. The meeting adjourned at 10:00 a.m.