

Committee on Judicial Ethics
Teleconference
Thursday, June 27, 2013

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Edward Karazin, Vice Chair, Judge Maureen D. Dennis, Judge Christine E. Keller and Judge Thomas J. Corradino, Alternate. Staff present: Attorney Martin R. Libbin, Secretary.

MINUTES

- I. With the above noted Committee members present, Justice Schaller called the meeting to order at 9:31 a.m. Although publicly noticed, no members of the public were in attendance.
- II. The Committee unanimously approved the Minutes of the June 18, 2013 meeting.
- III. The Committee discussed **Informal JE 2013-27** concerning whether a Judicial Official, who is an adjunct faculty member at a law school, may accept a gift from an attorney, who is also an adjunct, consisting of a book written by the attorney.
- IV. The Committee discussed **Informal JE 2013-29** concerning whether a Judicial Official may serve as the master of ceremonies for a nonprofit organization's charitable event to benefit children's programs if the Judicial Official limits his or her role to introducing dignitaries who attend the event and the Judicial Official's name is not used in connection with publicity for the event and does not appear in the event program book.

Rule 3.7 states in relevant part as follows:

- (a) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following situations:

...

- (4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice.

Based upon the facts presented, including that neither the organization nor the event concerns the law, the legal system or the administration of justice, the Committee members in attendance unanimously determined that participation as the master of ceremonies and introducing dignitaries that attend the fund-raising event would violate Rule 3.7(a)(4).

- V. The Committee discussed **Informal JE 2013-30** concerning whether a Judicial Official may provide a letter of reference for a long-time friend in connection with a federal sentencing hearing. The Judicial Official was not subpoenaed, but rather asked by defense counsel to provide a letter of reference.

Rule 1.2 requires a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and to avoid impropriety and the appearance of impropriety. 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.” The Commentary to Rule 1.3 states, in relevant part, as follows:

(2) A Judge may provide a reference or recommendation for an individual based on the judge’s personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if the use of the letterhead would not reasonably be perceived as an attempt to exert pressure by reason of judicial office.

Rule 2.10 (a) of the Code states that a judge “shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court or make any non-public statement that might substantially interfere with a fair trial or hearing.

Rule 3.3 of the Code states as follows:

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

The Comment to the foregoing Rule states as follows:

A judge who, without being duly summoned, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requesting the judge to testify as a character witness.

Based upon the facts provided, and in particular that the Judicial Official has not been subpoenaed but rather asked to voluntarily provide a letter of reference in connection with a criminal sentencing, the Committee unanimously determined that providing a letter of reference to the sentencing judge in a criminal case was specifically prohibited by Rule 3.3 and generally prohibited by Rules 1.2, 1.3 and 2.10(a).

- VI. The Committee discussed **Informal JE 2013-31** concerning whether a Judicial Official may serve on the Board of Directors of a law-related professional organization provided the Judicial Official does not participate in any fund-raising activities. The organization is an interdisciplinary association of professionals dedicated to conflict resolution. Members of the organization include, inter alia, lawyers, health professionals, mediators and policymakers. The organization is dedicated to enhancing the services of its members through education, training, research, and collaboration and generally improving the quality of the professionals who work within the field serviced by the organization. The Judicial Branch has made payments in the past to the organization for services rendered to the Branch, memberships in the organization and/or for Branch personnel to attend educational programs.

Rule 1.2 of the Code of Judicial Conduct states that a judge “should act at all times in a manner that promotes public confidence in the ... 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 1.3 of the Code provides that a judge “shall not use or attempt to use the prestige of judicial office to advance the private interests of the judge or others or allow others to do so.”

Rule 3.1 of the Code provides that subject to certain conditions a judge “may engage in extrajudicial activities except as prohibited by law.” When engaging in extrajudicial activities, a judge shall not participate in activities that (1) will interfere with the proper performance of judicial duties, (2) will lead to frequent disqualification, (3) would appear to a reasonable person to undermine the judge’s independence, integrity or impartiality, or (4) engage in conduct that would appear to a reasonable person to be coercive.

Similarly, Rule 3.7(a) provides that a judge “may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice... including, ... (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.” The rule’s commentary states that “[e]ven for law related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge’s participation in or association with the organization, would conflict with the judge’s obligation to refrain from activities that reflect adversely on a judge’s independence, integrity, and impartiality.” Rule 3.7, cmt. (2).

Based upon the information provided, including that the professional organization has received payments from the Judicial Branch and the likelihood that members of the organization will frequently be engaged in adversary proceedings in the court of which the Judicial Official is a member, the Committee unanimously determined that serving on the board of directors of the professional organization, regardless of whether or not the Judicial Official participated in fund-raising activities, would violate Rules 1.2, 1.3, 3.1 and 3.7. In reaching this opinion, the Committee considered [JE 2013-15](#) (Judicial Official may not serve on board of a nonprofit that has multiple contracts with Judicial) and [JE 2013-16](#) (Judicial Official may not serve as an officer, director or section leader for the CBA).

- VII. The Committee ratified **Emergency Staff Opinion JE 2013-32** concerning whether a Judicial Official may authorize an Executive Branch employee to include the name of the Judicial Official on the employee’s resume/letter of application for a position at another Executive Branch agency. The Judicial Official has personal knowledge of the employee and his/her qualification for the position. The employee is not a relative, as defined in C.G.S. § 51-39a or the Code of Judicial Conduct. The employee’s current agency regularly appears before the Judicial Official in adversarial proceedings and the employee regularly appears before the Judicial Official or prepares records for use by a co-worker who appears before the Judicial Official.

The inquiry was circulated to the Committee members and input solicited. Rule 1.2 of the Code states that a judge “should act at all times in a manner that promotes public confidence in the ... 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 1.3 of the Code 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.” The Commentary to Rule 1.3 states, in relevant part, as follows:

(2) A Judge may provide a reference or recommendation for an individual based on the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if the use of the letterhead would not reasonably be perceived as an attempt to exert pressure by reason of judicial office.

Rule 2.11 states, in relevant part, that a judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned.

The propriety of furnishing a letter of recommendation or serving as a reference for employment purposes has been addressed by the Committee in numerous prior opinions. See JE 2008-01, JE 2008-03, JE 2008-26, JE 2009-08, JE 2009-13, JE 2011-01, JE 2011-18A & 18B, JE 2011-19 and JE 2012-27.

In general, this Committee has concluded that a Judicial Official may provide references or recommendations subject to the following conditions:

- (1) The recommendation should be based on personal knowledge of the applicant's qualifications (see Rule 1.3 comment 2);
- (2) The applicant is not a relative within the meaning of the Code or General Statutes § 51-39a;
- (3) If the recommendation is furnished in writing on official letterhead, the Judicial Official should indicate that the recommendation constitutes the Judicial Official's personal opinion (see Rule 1.3 comment 2);
- (4) Persons/entities receiving the recommendation do not have cases pending before the Judicial Official at the time the recommendation is provided or for a reasonable period of time after the submission of the letter of recommendation; however, in JE 2012-27, the Judicial Official was permitted to provide a letter of recommendation for an applicant for a supervisory position in the Office of Public Defender Services even though the Public Defenders appeared before the Judicial Official, although the applicant did not appear and was not likely to appear if he or she received the new position;
- (5) If the Judicial Official believes that recusal would be required in order to comply with condition (4) because his or her fairness would be impaired, and that recusal is likely to be frequent, the Judicial Official should not provide the letter of recommendation;

- (6) The letter should be specific to the position being sought (see [JE 2008-26](#));
- (7) The Judicial Official may not provide a recommendation in adversarial proceedings (see [JE 2008-15](#));
- (8) The Judicial Official may not provide a recommendation in connection with government employment that might suggest inappropriate political activity, but may be listed as a reference (see [JE 2009-13](#) & [JE 2011-19](#)).

Based upon the information provided, and in particular that the employee or his or her agency regularly appear before the Judicial Official in adversarial proceedings, consistent with Rules 1.2, 1.3 and 2.11, the Judicial Official was advised that the Judicial Official should not consent to the use of his or her name as a reference.

VIII. The meeting adjourned at 9:57 a.m.