

Committee on Judicial Ethics
Teleconference
Thursday, April 18, 2019

Committee members present via teleconference: Judge Robert B. Shapiro (Acting Chair), Judge Vernon D. Oliver and Judge Karen A. Goodrow. Staff present: Attorney Joseph J. Del Ciampo.

MINUTES

- I. Judge Shapiro called the meeting to order at 9:34 a.m. Although publicly noticed, no members of the public were present.
- II. The Committee approved the minutes of the November 15, 2018 regular meeting with one correction.
- III. The Committee discussed **Informal JE 2019-01** concerning whether a Judicial Official may serve on the Board or various committees of a community organization that provides research and funding to improve the lives of a specific gender by unlocking the potential of their families and communities?

For most committees, you do not have to be a member of the Board to serve on the committee. The mission of the organization is to serve as a catalyst for change in the lives of the individuals it serves by conducting research, providing education to those who can provide philanthropy through a gender lens, and implementing strategies, including targeted grants. The organization is a tax-exempt 501(c) (3) entity.

The Board meets bi-monthly and is responsible for overseeing the organization's annual activities, participating and supporting events, and discussing and voting on various business matters. The Executive Committee exercises the authority of the Board between meetings of the Board, except as limited by the organization's by-laws. One committee oversees the organization's budget, including budget forecasts, recommending investments, and developing and overseeing policies related to the financial health of the organization (hereinafter, budget committee). One committee is responsible for oversight of all activities related to the structure, governance and compliance of the organization, including an annual review of rules and nominating individuals for Board positions (hereinafter, governance committee). One committee recommends the criteria and application process for funding requests, reviews grant applications and makes recommendations to the Board with respect to grants (hereinafter, grants committee). It also promotes the connection between the organization and donors, reviews grantee follow-up reports and provides information for inclusion in various organization publications. One committee is dedicated to the creation and implementation of a fundraising plan, recommends fundraising goals and determines strategies to reach those goals (hereinafter, fundraising committee). Members of this committee are responsible for soliciting gifts. One

committee plans the annual fundraising event, including selecting the speaker and honorees, choosing the venue, raising sponsorship funding, issuing invitations, and providing marketing and public relations support (hereinafter, annual fundraising event committee).

The organization does not appear as a party in a civil action on the Judicial Branch case lookup; however, some of the grant recipients do have cases listed.

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 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 3.1 of the Code concerns extrajudicial activities and sets forth general limitations on such activities. Those limitations include 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, (4) appear to a reasonable person to be coercive or (5) make use of court premises, staff, stationery, or other resources, except for incidental use or for activities that concern the law, the legal system or the administration of justice or unless the additional use is permitted by law.

Rule 3.7 (a) 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 charitable and civic organizations not conducted for profit including, but not limited to the following:

- (1) assisting such an organization or entity in planning related to fund-raising and participating in the management and investment of the organization’s or entity’s funds;
- (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;
- (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;

(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;

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(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.

In Emergency Staff Opinion [JE 2011-28](#), at issue was whether a Judicial Official could provide a letter of support to a law-related organization for the organization to use in soliciting donations. The Committee determined, in relevant part, as follows:

Rule 3.7(a)(5) permits a Judicial Official to make recommendations to a public or private fund-granting organization or entity in connection with its programs and activities if the organization or entity is concerned with the law, the legal system or the administration of justice, however, Rule 3.7(a)(5) should be viewed as applying in the context of the Judicial Official serving on the Board of the fund-granting organization and the fund-granting organization (as opposed to the grant recipient) must be concerned with the law, the legal system or the administration of justice.

In [JE 2017-06](#), at issue was whether a Judicial Official may serve on a United Way committee that is responsible for (1) allocating funds to recipient organizations, or (2) governance and strategic planning (but not fundraising). Based on the facts presented, including that the United Way is a charitable or civic non-profit organization that is not concerned with the law, the legal system, or the administration of justice, and it is not frequently involved in litigation, the Committee unanimously determined that (1) a Judicial Official may not serve on a committee responsible for the allocation of funds, and (2) a Judicial Official may serve on the governance and strategic planning committee subject to the same seven conditions imposed in [JE 2012-28](#).

At issue in [JE 2012-28](#) was whether a Judicial Official could accept an appointment to serve on the community advisory board of a nonprofit, non-law-related division within a higher education institution. The advisory board served as a sounding board for the division's director with respect to programming and administrative issues and focused on projects related to fund-raising, promotion and recruitment of students and community building. The Committee determined that the Judicial Official could serve on the advisory board subject to the following conditions:

1. The Judicial Official should regularly reexamine the activities of the advisory board to determine if it is proper to continue his or her relationship with the advisory board. Rule 1.2;
2. The Judicial Official may not use Judicial Branch resources for activities that concern the advisory board. Rule 3.1(5);
3. The Judicial Official may not continue to serve on the advisory 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 fund-raising and may participate in the management and investment of its funds. Rule 3.7(a)(1);
5. The Judicial Official may solicit contributions for the organization, but only 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. The Judicial Official may not engage in a general solicitation of funds on behalf of the organization. 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); and
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).

Based on the information provided, the Committee determined that:

1. The Judicial Official may serve on the Board and its Executive Committee subject to the conditions listed above in [JE 2012-28](#). See Rule 3.7(a) (6).
2. The Judicial Official may serve on the budget committee. See Rule 3.7(a) (1).
3. The Judicial Official may serve on the governance committee (see [JE 2017-06](#)); however, the Judicial Official should not solicit persons to serve

on the Board as that is analogous to soliciting members for a non-law related organization. See Rule 3.7(a) (3).

4. The Judicial Official may not serve on the grants committee since the organization is not concerned with the law, the legal system or the administration of justice. See Rule 3.7(a) (5).
5. The Judicial Official may serve on the fundraising committee and the annual fundraising event committee; however, the Judicial Official is limited in soliciting contributions to members of his or her family and to judges over whom the Judicial Official does not exercise supervisory or appellate authority. See Rule 3.7(a) (1) and (2).

The Committee also determined that, with respect to service on the budget, governance, fundraising and annual fundraising event committees, the Judicial Official is subject to conditions 1, 2, 3, 6 and 7 of [JE 2012-28](#).

- IV. The meeting adjourned at 9:38 a.m.