

Committee on Judicial Ethics
Teleconference
Friday, April 19, 2013

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Edward R. Karazin, Jr., Vice Chair, Judge Maureen D. Dennis, Judge Christine E. Keller, and Professor Jeffrey A. Meyer. Staff present: Attorney Martin R. Libbin, Secretary.

MINUTES

- I. With the above noted Committee members present, Justice Schaller called the meeting to order at 1:02 p.m.
- II. Although publicly noticed, no members of the public were in attendance.
- III. The Committee approved the Minutes of the March 22, 2013 meeting. (Professor Meyer abstained.)
- IV. The Committee ratified Emergency Staff Opinions **JE 2013-13**.
- V. The Committee discussed Informal **JE 2013-15** concerning whether a Judicial Official may serve on the board of directors of a nonprofit organization that provides services to court-involved clients and receives the majority of its funding from contracts with the Judicial Branch.

The nonprofit organization has multiple contracts with the Judicial Branch to provide various assessments and services to, inter alia, litigants in family, juvenile and criminal court matters (hereinafter "clients"). Clients may be referred directly by the court, as well as by probation and family services personnel. Various contracts require the nonprofit organization to provide reports to the court and to have personnel appear in court to testify regarding a client's success or failure to complete the services and programs provided by the nonprofit organization.

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 private interests of the judge or others or allow others to do so.”

Rule 3.1 of the Code states that a Judicial Official may engage in extrajudicial activities, except as prohibited by law; however, a judge may not participate in extrajudicial activities that will (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(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).

In discussing Rule 3.7(a)(6)(B), the Committee (with one member recused) determined that the prohibition on serving as an officer, director, trustee or nonlegal advisor of an organization concerned with the law, the legal system or the administration of justice if the organization “will frequently be engaged in adversary proceedings in the court of which the judge is a member” applies, not only when the organization is a party to adversary proceedings, but also when the organization supplies witnesses and reports for use in adversary proceedings. Based upon the foregoing, an appearance of impropriety would arise if a Judicial Official serving on the board of directors of a nonprofit organization or member of the Judicial Official’s staff were to refer clients to the nonprofit organization. Further, the nonprofit organization may use or attempt to use the prestige of the Judicial Official’s office when seeking additional contracts with the Judicial Branch or others. Accordingly, the Committee, with one member recused, unanimously determined that service on the nonprofit organization’s board of directors would violate Rules 1.2, 1.3, 3.1 and 3.7(a)(6)(B).

- VI. The Committee discussed **Informal JE 2013-16** concerning whether a Judicial Official may serve as an officer, director or section leader for the Connecticut Bar Association (“CBA”)? The CBA is a non-profit organization dedicated to promoting public service and advancing the principles of law and justice.

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 CBA comments and takes public positions on legislation, engages in issue advocacy, including issues that directly impact the judiciary, sometimes

files amicus curiae briefs and further that people in leadership positions customarily solicit opinions from and/or attempt to persuade CBA members concerning various matters, the Committee unanimously determined that, although membership in the CBA is permissible, serving as an as an officer, director or section leader for the CBA would violate Rules 1.2, 1.3, 3.1 and 3.7.

- VII. The Committee discussed Informal **JE 2013-17** concerning whether a Judicial Official may continue his or her membership in the American Academy of Matrimonial Lawyers (“AAML”) in the capacity of a Judicial Fellow.

According to the AAML’s admissions standards (see <http://aaml.org/aaml-fellow-register>), only highly experienced practicing matrimonial law attorneys may apply for membership in the AAML. The admissions standards further provide that a judge may not apply for admission to the AAML unless the judge “is in the active practice of law while being a sitting judge”; in Connecticut, however, Rule 3.10 of the Code of Judicial Conduct generally prohibits judges from engaging in the practice of law. According to the Executive Director of the AAML, an attorney who is admitted to the AAML as a Fellow and who subsequently becomes a judge may remain affiliated with the AAML as a Judicial Fellow, even if the Judicial Fellow will not be engaged in the practice of law.

AAML Fellows (including Judicial Fellows) are not obligated to perform any role or duties. Some of the benefits of being a Fellow include a listing on the AAML website for the public to contact, eligibility for the AAML’s continuing legal education seminars, and the general opportunity to network with other Fellows. Currently, there are approximately 30 attorneys admitted in Connecticut who are Fellows.

Rule 1.2 of the Code of Judicial Conduct states that a “judge shall 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.”

Rule 2.11 provides that a “judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned....”

Rule 3.1 of the Code of Judicial Conduct 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:

- (1) participate in activities that will interfere with the proper performance of the judge’s judicial duties;

- (2) participate in activities that will lead to frequent disqualification of the judge;
- (3) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;...

The rule's commentary encourages judges to participate in appropriate extrajudicial activities and observes that "[j]udges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice." Rule 3.1, cmt. (1).

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." 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, a majority of the Committee (with one member dissenting) determined that the Judicial Official may continue his or her membership with the AAML as a Judicial Fellow, subject to the following conditions:

- (1) if a Fellow of the AAML appears before the Judicial Official, the Judicial Official should disclose the relationship to all parties (Rule 1.2);
- (2) if an issue comes before the Judicial Official for decision that involves a matter on which AAML has taken a public position (such as by adopting a resolution or filing an amicus curiae brief), the Judicial Official should consider whether recusal is necessary (Rule 2.11);
- (3) if the Judicial Official is contacted by a member of the public seeking a referral, the Judicial Official may not recommend the name of an attorney. However, if the individual requesting the recommendation has a sufficiently close relationship to the Judicial Official that the Judicial Official would automatically recuse himself or herself from a case involving that person independent of whether the Judicial Official provides a recommendation, the Judicial Official may recommend the name of an attorney. If a Judicial Official provides a recommendation, he/she should recommend multiple names of counsel (See [JE 2008-17](#)); and
- (4) the Judicial Official should regularly reexamine the activities and rules of the AAML to determine whether it is proper for the Judicial

Official to continue his or her relationship with it and, particularly since AAML has a limited number of members in Connecticut and membership is restricted to a particular segment of the bar, the Judicial Official should carefully consider whether the Judicial Official's identification with or involvement in specific programs or activities of the AAML may undermine confidence in the Judicial Official's independence, integrity and impartiality (Rules 1.2 and 3.7) or may result in frequent recusals, which may unduly limit the availability of the Judicial Official to hear all types of cases that come before the court (See Comment to Rule 2.7).

One member of the Committee expressed strong reservations about whether it would be prudent for a Judicial Official to continue his or her membership with the AAML as a Judicial Fellow, even if not a technical violation of the Code of Judicial Conduct. The reservations were based on AAML's prerequisites for membership, which effectively preclude many attorneys/judges from being invited to join, and its potential for lobbying and for advocacy. These facts may create a perception that AAML is a partisan organization that does not reflect the many different segments of the bar or represent various sides of professional issues. In addition, as an AAML Judicial Fellow the Judicial Official may devote some time to monitoring the organization's lobbying and advocacy activities and may have to avoid particular assignments, for example , as a family presiding judge or a family trial judge, to avoid a conflict with Rule 3.1.

- VIII. The Committee discussed Informal **JE 2013-18** concerning whether a Judicial Official (a Superior Court judge) may continue his or her membership in the American Academy of Appellate Lawyers ("AAAL") in the capacity of a Judicial Fellow.

The purpose of the AAAL is to advance the highest standards and practices of appellate advocacy and to recognize outstanding appellate lawyers. According to AAAL bylaws, a Fellow who is elected or appointed to judicial office "becomes a Judicial Fellow, with all of the rights and privileges of the Academy except the right to vote in elections. Judicial Fellows shall not be required to pay dues. Upon leaving judicial office, the person resumes the status of a Fellow and ceases to be a Judicial Fellow." Article 3.1 (a). (The bylaws can be reviewed at the following address:

<https://www.appellateacademy.org/about/bylaws.cfm>.)

The AAAL is highly selective, with a limit of 500 Fellows, excluding Judicial Fellows, Emeritus Fellows (generally, age 70 and ceased to practice law) and Honorary Fellows (practice law but do not qualify as a Fellow). To become a Fellow, one must have engaged substantially in appellate practice for at least 15 years. Election as a Fellow is by

invitation only and involves a three step process. First, the individual must be nominated either by the Board or by an existing Fellow and if by a Fellow, seconded by an additional Fellow, neither of whom may be a member of the same firm as the person nominated. To be approved, the nominee's practice must focus substantially on appeals. This requirement is presumptively met if the nominee was substantially involved on average in at least 2 appeals per year for at least 15 years. The Membership Evaluation Committee reviews the application and makes relevant inquiries of opposing counsel, co-counsel and judges. If the Membership Evaluation Committee approves the nominee by a two-thirds majority, the Board votes, following input from Fellows. If the Board approves by a two-thirds majority, the nominee is extended an invitation to join. All discussions, reports and considerations of nominees is confidential and "[t]he person under consideration for nomination or election as a Fellow shall not be informed, directly or indirectly, of the proceedings."

AAAL Fellows (including Judicial Fellows) are not obligated to perform any role or duties. Some of the benefits of being a Fellow include a listing on the AAAL website for the public to contact, eligibility for the AAAL's continuing education seminars, and the general opportunity to network with other Fellows. Currently, there are approximately 10 attorneys admitted in Connecticut who are Fellows.

Rule 1.2 of the Code of Judicial Conduct states that a "judge shall 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."

Rule 2.11 provides that a "judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned...."

Rule 3.1 of the Code of Judicial Conduct 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:

- (1) participate in activities that will interfere with the proper performance of the judge's judicial duties;
- (2) participate in activities that will lead to frequent disqualification of the judge;
- (3) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;...

The rule's commentary encourages judges to participate in appropriate extrajudicial activities and observes that "[j]udges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice." Rule 3.1, cmt. (1).

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.” 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, a majority of the Committee (with one member dissenting) determined that the Judicial Official may continue his or her membership with the AAAL as a Judicial Fellow, subject to the following conditions:

- (1) if a Fellow of the AAAL appears before the Judicial Official, the Judicial Official should disclose the relationship to all the parties (Rule 1.2);
- (2) if an issue comes before the Judicial Official for a decision that involves a matter on which AAAL has taken a public position (such as by adopting a resolution or filing an amicus curiae brief), the Judicial Official should consider whether recusal is necessary (Rule 2.11);
- (3) if the Judicial Official is contacted by a member of the public seeking a referral, the Judicial Official may not recommend the name of an attorney. However, if the individual requesting the recommendation has a sufficiently close relationship to the Judicial Official that the Judicial Official would automatically recuse himself or herself from a case involving that person independent of whether the Judicial Official provides a recommendation, the Judicial Official may recommend the name of an attorney. If a Judicial Official provides a recommendation, he/she should recommend multiple names of counsel (See [JE 2008-17](#)); and
- (4) the Judicial Official should regularly reexamine the activities and rules of the AAAL to determine whether it is proper for the Judicial Official to continue his or her relationship with it and, particularly since AAAL has a limited number of members in Connecticut and membership is restricted to a particular segment of the bar, should carefully consider whether the Judicial Official’s identification with or involvement in specific programs or activities of the association may undermine confidence in the Judicial Official’s independence, integrity and impartiality (Rules 1.2 and 3.7) or may result in frequent recusals, which may unduly limit the availability of the Judicial Official to hear all types of cases that come before the court (See Comment to Rule 2.7).

One member of the Committee expressed reservations about whether

it would be prudent for a Judicial Official to continue his or her membership with the AAAL as a Judicial Fellow, even if not a technical violation of the Code of Judicial Conduct. The reservations were based on AAAL's prerequisites for membership, which effectively preclude many attorneys/judges from being invited to join, and its potential for advocacy. These facts may create a perception that AAAL is a partisan organization that does not reflect the many different segments of the bar or represent various sides of professional issues. In addition, as an AAAL Judicial Fellow the Judicial Official may devote some time to monitoring the organization's advocacy activities and may have to avoid particular assignments, for example in complex litigation, as a civil presiding judge or a civil trial judge, to avoid a conflict with Rule 3.1.

IX. The meeting adjourned at 1:54 p.m.