

Committee on Judicial Ethics
Teleconference
Tuesday, July 15, 2014

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Christine E. Keller, Vice Chair, Judge Barbara M. Quinn, Professor Sarah F. Russell and Judge Thomas J. Corradino (Alternate). Staff present: Attorney Martin R. Libbin, Secretary and Attorney Viviana Langou Livesay, Assistant Secretary.

MINUTES

- I. With the above noted Committee members present, Justice Schaller called the meeting to order at 9:32 a.m. Although publicly noticed, no members of the public were in attendance.
- II. The Committee members present approved the minutes of the June 23, 2014 meeting.
- III. The Committee discussed **Informal JE 2014-10** concerning whether a Judicial Official may lend his or her name to an annual writing competition sponsored by an ethnic bar association.

The bar association is seeking to establish a permanent annual writing competition for college students, related to the ethnicity's history and culture. The winning submission(s) will receive a financial award. The bar association wants to name the competition after the inquiring Judicial Official. The association will attempt to raise funds for the award through letters of solicitation to potential donors.

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 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 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 states that a judge may engage in extrajudicial activities, except as prohibited by law; however, a judge shall not participate in activities

that will interfere with the proper performance of judicial duties, lead to frequent disqualification or appear to a reasonable person to undermine the judge's independence, integrity or impartiality.

Rule 3.7 concerns participation in educational, religious, charitable, fraternal, or civic organization and activities. Subject to the requirements in Rule 3.1, a judge is permitted to participate in various activities sponsored by or on behalf of such entities. Subject to the requirements in Rule 3.1, subsection (a)(4) specifically authorizes judges "appearing or speaking at, receiving an award or other recognition at, 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, as well as this Committee's and New York's prior decisions, the Committee unanimously determined that the event does not qualify as one that concerns "the law, the legal system or the administration of justice." The Committee further determined that the Judicial Official may permit the use of his or her name with respect to the writing competition subject to the following conditions:

1. The Judicial Official does not participate in fund raising except as permitted in Rule 3.7(a)(2);
2. In accordance with Rule 1.3, the Judicial Official inform the bar association that it cannot use the Judicial Official's name in connection with soliciting funding for the competition. For example, the solicitation could state it is seeking funding for the annual writing competition, but it cannot state it is seeking funding for the annual Judge X writing competition; and
3. The Judicial Official should retain the right to review and pre-approve the use of any information or other material used to solicit contributions to fund the competition.

In reaching its opinion, the Committee considered its prior opinions in [JE 2011-05](#) (for an activity to qualify as one that concerns "the law, the legal system or the administration of justice" it must be shown that there is "a direct nexus between [the activity] and how the court system meets its statutory and constitutional responsibilities – in other words, how the courts go about their business"), [JE 2009-11](#) (a Judicial Official, who was to be the sole guest of honor at a fund raiser by a nonprofit organization, should not allow the use of his or her name for purposes of advertising the event), [JE 2010-30](#) (a Judicial Official may be honored at an event hosted by a law related organization for an event that concerns the law, the legal system or the administration of justice, and featured in publicity used to solicit sponsors to underwrite a portion of the program expenses;

however, special care must be taken to ensure that the Judicial Official's name was not used to encourage law firm participation and that no appearance is created that any of the donors were in a special position to influence the Judicial Official), [JE 2010-31](#) (a Judicial Official may not lend his or her name to a campaign to solicit existing members of a law related organization to provide additional funds to become sustaining members of the organization), [JE 2010-32](#) (a Judicial Official may accept an honorary degree from a college in connection with a speaking appearance at the college, subject to various conditions including that the Judicial Official inform the college that it should not promote or advertise the awarding of the honorary degree for the purposes of any fundraising activities), and New York Advisory Opinion 12-153 (sitting judges may not permit a bar association to establish law school scholarships in their names where solicitors would seek contributions for a special fund in the name of a retired judge and advise potential contributors that the purpose of the special fund was to establish law school scholarships named for the inquiring judges and a particular attorney).

- IV. The Committee discussed **Informal JE 2014-11** concerning whether a Judicial Official may serve as the editor of a legal treatise for which the Judicial Official will be compensated.

The Judicial Official will be responsible for obtaining judges and attorneys to draft various chapters of the treatise, which judges and attorneys will not be compensated. The treatise is intended to be an objective statement of what the law is with respect to the subject matters covered. The publisher is a commercial business. The Judicial Official is not an appellate level judge and is not currently assigned to sit (and for several years has not sat) on cases involving the subject matter of the treatise. The judges who are contacted about writing a chapter will not be, at the time of the request, ones that the inquiring Judicial Official has any supervisory authority over and the attorneys that are contacted will not be ones that have recently appeared or are likely to appear in the foreseeable future before the Judicial Official.

Rule 1.2 of 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 2.10 of the Code prohibits judges from making any public statement “that might reasonably be expected to affect the outcome or to 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 2.11 of the Code requires disqualification of a judge in “any proceeding in which the judge’s impartiality might reasonably be questioned including, but not limited to, the following circumstances... (4) The judge has made a public statement, other than in a court proceeding, judicial decision, or opinion that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.”

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, (4) appear to a reasonable person to be coercive, or (5) make use of court premises, staff, stationery, equipment or other resources, except for incidental use or for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Rule 3.11 of the Code limits a judge from participating in business or financial transactions that will, *inter alia*, (1) interfere with the proper performance of judicial duties, (2) lead to frequent disqualification of the judge, (3) involve the judge in frequent or continuing transactions with attorneys or parties who are likely to come before the court on which the judge serves.

Rule 3.12 of the Code allows a judge to accept reasonable compensation for extrajudicial activities permitted by law unless acceptance of the compensation would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.

Rule 3.15 of the Code states that a judge shall publicly report the amount or value of compensation received for extrajudicial activities permitted by Rule 3.12.

Based upon the facts submitted, the Committee unanimously determined that the Judicial Official may edit the treatise, contact judges and attorneys about writing various chapters of the treatise and accept compensation for doing so, subject to the following conditions:

1. The Judicial Official may not use, or permit others to use, his/her judicial title or office or otherwise exploit the judicial position for promotional purposes. The Judicial Official's title and experience as a judge may, however, be included in a biography as long as the biographical sketch contains only factual statements intended to inform the reader of the judge's qualifications and experience (see Rule 1.3);
2. The Judicial Official should retain the right to review and pre-approve the use of any biographical information about the Judicial Official in connection with the sale or publicity of the treatise (see Rule 1.3);
3. The Judicial Official should ensure that he or she does not make any statements about pending or impending cases in any section authored by the Judicial Official and that the treatise does not otherwise attribute to the Judicial Official comments about any pending or impending matters (see Rule 2.10);
4. The Judicial Official should not make use of court premises, staff, stationery, equipment or other resources, except for incidental use or as provided in Rule 3.1(5);
5. The Judicial Official should ensure that the treatise does not contain content which would cast doubt on the Judicial Official's impartiality or otherwise reflect any predisposition in particular cases (see Rules 2.11(a), 3.1(3));
6. The Judicial Official's compensation is reasonable and commensurate with the work performed (see Rule 3.12);
7. The Judicial Official reports the compensation (see Rule 3.15); and
8. If an attorney that the Judicial Official contacted appears before the Judicial Official within a reasonable period of time following the Judicial Official contacting the attorney about writing a chapter of the treatise, the Judicial Official shall disclose the information to the parties to the proceeding. Thereafter, if a motion to disqualify is filed, the Judicial Official will need to determine, based upon the information provided in the motion and accompanying affidavit (as provided for in Connecticut Practice Book § 1-23), as well as the particular circumstances of the case, whether the Judicial Official should recuse him or herself.

In reaching its opinion, the Committee considered an article entitled "The Judge as Author" by Cynthia Gray, as well as [JE 2012-13](#) (approving a

Judicial Official's cooperation with a publisher's program of publicizing the Judicial Official's book subject to various conditions similar to those set forth in this matter).

- V. The Committee discussed **Informal JE 2014-12**. The facts are as follows. An appellate level Judicial Official's relative within the first degree of kinship is a first year associate in a large, multi-office Connecticut law firm which regularly appears before the Judicial Official. Should the Judicial Official recuse himself or herself when other members of the firm appear before the Judicial Official?

The Judicial Official had the clerk's office notify the parties in a multi-party case that to the best of the Judicial Official's knowledge, the relative was not involved in the case, had no interest that could be substantially affected by the proceedings, did not reside in the Judicial Official's household, and had no economic interest in the subject matter in controversy or in a party to the proceeding and that the Judicial Official believed that he or she could decide the matter impartially. A party advised the Clerk's Office that it objected, citing Canon 2 and Rule 2.11(a)(2)(C) and the Comments to that Rule, as well as noting that the relative's law firm had represented the party in the trial court and that it was objectively reasonable to question whether the Judicial Official might be influenced by, or could appear to be influenced by, the possibility that the relative's interests could be affected by the outcome of the proceedings.

Rule 1.2 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 2.4 states, in relevant part, that "(b) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment. (c) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge's judicial conduct or judgment."

Rule 2.7 states that a judge "shall hear and decide matters assigned to the judge except when disqualified by Rule 2.11 or other law."

Rule 2.11(a) states that a judge "shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned" Two of the specifically identified circumstances requiring

disqualification are when the judge knows that the judge's "spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is ... acting as a lawyer in the proceeding ... [or] a person who has more than a de minimis interest that could be substantially affected by the proceeding". Rule 2.11 (a) (2) (B) and (C). An additional circumstance requiring disqualification occurs when the judge knows that the judge, "individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding." Rule 2.11 (a) (3). Comment (4) to Rule 2.11 states as follows: "The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under subsection (a) or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under subsection (a) (2) (C), the judge's disqualification is required." Comment (7) to Rule 2.11 states that an appellate level judge is not disqualified from sitting on a proceeding merely because, inter alia, the Judicial Official or the Judicial Official's spouse, domestic partner, parent, child, or other member of the Judicial Official's family residing in the Judicial Official's household is practicing or has practiced law with a firm or attorney who filed an amicus brief in a matter before the Judicial Official.

Rule 2.11 (c) states that a judge subject to disqualification under this Rule, except for bias or prejudice under subsection (a)(1), "may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive the disqualification, provided that the judge shall disclose on the record the basis of such disqualification. If, following the disclosure, the parties and lawyers agree, either in writing or on the record before another judge, that the judge should not be disqualified, the judge may participate in the proceeding."

The Connecticut Supreme Court has articulated the following standard for recusal or disqualification of a judge:

The standard to be employed is an objective one, not the judge's subjective view as to whether he or she can be fair and impartial in hearing the case. ... "Any conduct that would lead a reasonable [person] knowing all the circumstances to the conclusion that the judge's 'impartiality might reasonably be questioned' is a basis for the judge's disqualification...."

Papa v. New Haven Federation of Teachers, 186 Conn. 725, 744-746 (1982) (internal citations omitted).

Based upon the information provided for the particular case pending before the Court, the Committee unanimously determined that the Judicial Official is not disqualified subject to the following conditions:

1. The Judicial Official, through the clerk's office, inquires of the relative or the relative's firm whether the relative was involved in any manner with the acquisition or representation of the client; has more than a de minimis interest that could be substantially affected by the proceeding; or has an economic interest in the subject matter in controversy or in a party to the proceeding.
2. If the relative was involved in the acquisition or representation of the client, or has more than a de minimis interest that could be substantially affected by the proceeding, the Judicial Official should recuse him or herself or follow the procedure set forth in Rule 2.11(c) to request the parties to consider whether to waive the Judicial Official's disqualification.
3. If the relative had no involvement in the acquisition or representation of the client, does not have more than a de minimis interest that could be substantially affected by the proceeding, and does not have an economic interest in the subject matter in controversy or in a party to the proceeding, the Judicial Official is not disqualified.

In reaching its opinion, the Committee considered its opinion in [JE 2013-48](#) and the materials cited therein.

- VI. The Committee discussed **Informal JE 2014-13**. The inquiry and facts are as follows. May relatively new Judicial Official, who prior to his/her appointment served on a municipal police department's firearm discharge and civilian complaint review board, (1) preside over cases involving arrests by the department, or cases in which officers from the department are witnesses, and (2) preside over ex parte proceedings, including probable cause determinations for warrants for the department. The Judicial Official is a social acquaintance of the municipal police chief and has socialized with the chief and his spouse in the recent past.

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 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 as a judge."

Rule 2.11 states, in relevant part, as follows:

(a) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned including, but not limited to, the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

Based on the facts presented, including the assumption that the police chief exercises supervisory control over all police department cases, the Committee unanimously determined that the Judicial Official should not preside: (1) over cases involving arrests by the municipal police department, or in cases in which officers from the department are witnesses, or (2) over ex parte proceedings, including probable cause hearings, involving the police department, for a reasonable period of time, which is not less than two years from the date of the Judicial Official's commencement of service as a judge or the last social contact with the police chief, whichever occurs later. If the police chief's last day as head of the department occurs prior to such time, then the two-year time period should be measured from the commencement of the judge's service rather than the date of last social contact with the police chief. After such time, the Judicial Official may preside over such cases provided the Judicial Official does not believe that he or she has any personal bias (favorable or unfavorable) involving the police department and/or the police chief.

In reaching its opinion, the Committee considered [JE 2011-20](#) (a Judicial Official, who has a family member who is a sworn member of a local police department, may preside over matters, including but not limited to ex parte warrant request, in which the police department or any other officers employed by the police department was a party or a witness, subject to certain conditions), [JE 2011-06](#) (a Judicial Official, who has a personal relationship with the Attorney General, does not have a duty to automatically disqualify himself or herself when a member of the Attorney General's Office appears; however, the Judicial Official has a duty to disclose his or her personal relationship), New York Advisory Opinion 89-88 (a part-time judge, who as an attorney, formerly represented a police officer in a real estate transaction, should disqualify himself or herself, for as long as the judge feels that he or she cannot be impartial, when the police officer seeks the judge's signature on a warrant of arrest, or when the police officer appears as a witness in a proceeding before the judge), and New York Advisory Opinion 09-19 (a part-time lawyer judge who is a practicing attorney must disqualify him/herself in cases when a police sergeant currently represented by the judge's law firm is called to testify before the judge. When other town police officers appear in the judge's

court, the judge should disqualify him/herself if judge learns that sergeant is involved in a supervisory capacity.)

VII. The meeting adjourned at 10:10 a.m.