

Committee on Judicial Ethics
Teleconference
Monday, July 28, 2014

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Christine E. Keller, Vice Chair, Judge Barbara M. Quinn, Judge Maureen D. Dennis and Professor Sarah F. Russell. Staff present: Attorney Martin R. Libbin, Secretary and Attorney Viviana L. Livesay, Assistant Secretary.

MINUTES

- I. With the above noted Committee members present, Justice Schaller called the meeting to order at 9:33 a.m. Although publicly noticed, no members of the public were in attendance.
- II. The Committee members present approved the minutes of the July 15, 2014 meeting.
- III. The Committee discussed **Informal JE 2014-14** concerning whether a Judicial Official may purchase products sold by a Judicial Branch employee whom the Judicial Official does not directly supervise or control.

The employee is an independent sales representative for a for-profit company which sells its products through its representatives online, in person and at product parties and demonstrations (such as with Mary Kay, Avon, Tupperware, Amway products, etc.). The Judicial Official observed another Judicial Branch employee with a product that was of interest to the Judicial Official and the Judicial Official inquired where the second employee had obtained it. The second employee advised the Judicial Official that it was a product of the X company, and provided the name of the Judicial Branch employee who is a sales representative for the X company.

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 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 2.12 (a) states that a judge “shall take reasonable measures to ensure that court staff, court officials, and others subject to the judge’s direction and control act in a manner consistent with the judge’s obligations under this Code.”

Rule 3.1 states that a Judicial Official may engage in extrajudicial activities, except as prohibited by law, but when engaging in such activities the Judicial Official should not, inter alia, engage in conduct that would appear to a reasonable person to be coercive or 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.

Based upon the information provided, the Committee unanimously determined that the Judicial Official is permitted to purchase items from the Judicial Branch employee subject to the following conditions:

1. The Judicial Official is charged the same price as other customers.
2. The purchase and delivery of the products occur during a non-working period (i.e. lunch, etc.) for both the Judicial Official and the Judicial Branch employee.
3. The Judicial Official does not use state resources, other than incidental use, in purchasing the products sold by the Judicial Branch employee.

In reaching its opinion, the Committee considered an Office of State Ethics staff opinion noting, inter alia, that “Although the Code of Ethics does prohibit a state employee from using his or her position for financial gain, the Ethics Commission has never held that the sale of such items [Avon, Mary Kay, Pampered Chef, and Girl Scout Cookies] in the workplace is prohibited. What could be a problem under the Code is the sale of merchandise by a person who supervises a department, for example, if other employees feel ‘strong armed’ into buying from their boss.”

IV. The meeting adjourned at 9:36 a.m.