

Committee on Judicial Ethics
Teleconference
Wednesday, August 27, 2014

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

MINUTES

- I. With the above noted Committee members present, Judge Keller called the meeting to order at 9:31 a.m. Although publicly noticed, no members of the public were in attendance.
- II. The Committee welcomed new member, Judge Angela C. Robinson.
- III. The Committee members present, (with the exception of new member, Judge Robinson, who abstained), approved the minutes of the July 28, 2014 meeting.
- IV. The Committee discussed **Informal JE 2014-15**. This inquiry seeks a clarification of this Committee's opinion in [JE 2014-11](#). In that opinion, the Committee determined that, subject to various conditions, a Judicial Official may serve as the editor of a legal treatise and solicit judges and attorneys to author chapters of the treatise. A Judicial Official who was asked to author a chapter inquired if the following facts, which were recited in JE 2014-11, impact whether the inquiring Judicial Official may author a chapter: "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 inquiring Judicial Official is not an appellate level judge and the Judicial Official who is the editor of the treatise did not at the time of the request and does not currently have any supervisory authority over the inquiring Judicial Official; however, the chapter that the inquiring Judicial Official has been asked to author concerns the types of cases the inquiring Judicial Official currently presides over and has presided over in the recent past.

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 or 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, or (4) appear to a reasonable person to be coercive. Comment (1) to this Rule states, in relevant part, that "to the extent time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects."

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, or (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 author a chapter of the treatise 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 he or she does not make any statements about any pending or impending cases (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 otherwise provided in Rule 3.1(5);
5. The Judicial Official should ensure that the portion of the treatise that the Judicial Official authors 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)); and
6. If the Judicial Official receives compensation, including but not limited to a copy of the treatise, the Judicial Official shall report such compensation in accordance with Rule 3.15.

In reaching its conclusion, the Committee considered its opinion in JE 2014-11 and the materials cited therein. The Committee noted that the fact that the inquiring Judicial Official in JE 2014-11 did not currently sit and had not for several years sat on cases involving the subject matter of the treatise was relevant to ensuring that any attorneys solicited to author a chapter did not feel compelled to do so because they were likely to

appear before the soliciting Judicial Official. The Committee noted that was not a concern with respect to the current inquiry since the inquiring Judicial Official would not be soliciting individuals to author a portion of the treatise.

V. New Business

- a. The Committee discussed the Chair's proposal to hold one meeting per month. The Committee agreed to meet on the third Thursday of the month. A schedule of future meetings will be distributed.
- b. The Committee considered amending the "Policy and Rules of the Committee" to permit the issuance of opinions on issues pending before a court. No changes to the policy were made, but the Chair asked the members to think about the proposal for further discussion at the Committee's next meeting.

VI. The meeting adjourned at 9:52 a.m.