

Committee on Judicial Ethics
Teleconference
Monday, September 9, 2013

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Christine R. Keller, Vice Chair 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 9:38 a.m. Although publicly noticed, no members of the public were in attendance.
- II. The Committee members present approved the minutes of the August 19, 2013 meeting.
- III. The Committee tabled discussion on **Informal JE 2013-38** until the next meeting.
- IV. The Committee discussed **Informal JE 2013-39** concerning whether a Judicial Official may speak to a class of law school students about the legislative and state budget process.

The Judicial Official will either speak alone or on a panel with current or former legislators, some of whom may be lawyers. The Judicial Official was selected to speak to the students because of the Judicial Official's prior experience in these areas. The Judicial Official will receive no compensation.

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. 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 2.10(a) of the Code provides that "[a] judge shall not make 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 nonpublic statement that might substantially interfere with a fair trial or hearing." Rule 2.10(d) recognizes certain exceptions to this prohibition,

including an exception for a judge's public statement to "explain court procedures."

Rule 3.1 of the Code provides that subject to certain conditions a judge "may engage in extrajudicial activities except as prohibited by law." 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, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law." Rule 3.1, cmt. (1).

Based upon the information provided, the Committee determined that the Judicial Official is not ethically restricted from speaking to law school students about the legislative and state budget process, alone or on a panel, subject to the conditions set forth below:

- (1) The Judicial Official's participation does not interfere with the proper performance of the Judicial Official's duties nor create grounds upon which the Judicial Official may have to recuse him/herself;
- (2) The Judicial Official does not give opinions that would cast doubt on the Judicial Official's impartiality or indicate that the Judicial Official has a predisposition with respect to a particular case; and
- (3) The Judicial Official should refrain from any inappropriate comment (as indicated above) about pending or impending matters.

- V. The Committee discussed **Informal JE 2013-40** concerning whether a Judicial Official may serve as a "referee" (i.e., reference) for a law firm that represented the Judicial Official in a few cases prior to his or her appointment to the bench. The reference would be submitted to Chambers and Partners ("Chambers"), a company that publishes rankings of law firms and lawyers by practice area for inclusion in its Chambers guides. Unlike *Martindale-Hubbell*, Chambers states that all interviews are confidential.

Law firms that would like to be ranked in the Chambers guide are asked to provide a list of up to 15 "referees" to be contacted for a short interview about the firm's work in the relevant practice area. A "referee" is usually a client but can be anyone who has knowledge of the firm. Interviews with referees are non-attributable and any quotes published by Chambers are anonymous. Chambers indicates that it takes care never to include a

quote that will reveal the source. Law firms are ranked in bands from 1-6, with 1 being the best. The qualities on which rankings are assessed include technical legal ability, professional conduct, client service, commercial astuteness, diligence, commitment, and other qualities most valued by the client.

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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.” Comment (2) to Rule 1.3 notes that a judge “may provide a reference or recommendation for an individual based on the judge’s personal knowledge.” Comment (3) to Rule 1.3 specifically authorizes judges to respond to inquiries by appointing authorities and screening committees for judicial selection.

Rule 2.11 states that 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, when the judge has a personal bias or prejudice concerning a party’s lawyer.

Based upon the information provided, including that interviews with referees are non-attributable and any quotes published by Chambers are anonymous and will not contain information that will reveal the source, the Committee determined that the Judicial Official may serve as referee, subject to the following conditions:

- (1) The Judicial Official has personal knowledge of the law firm’s qualifications that are relevant for inclusion in the Chambers guide;
- (2) No member of the law firm is a relative of the Judicial Official within the meaning of the Code or C.G.S. § 51-39a;
- (3) The Judicial Official indicates that the opinions expressed represent the personal opinions of the Judicial Official;
- (4) No member of the law firm has an appearance before the Judicial Official at the time of the interview or for a reasonable period, under the circumstances, before or after the interview; and

(5) If the Judicial Official believes that recusal would be required in order to comply with condition (4) because his or her fairness would be impaired, and that recusal is likely to be frequent, the Judicial Official should not agree to serve as a “referee.”

VI. The meeting adjourned at 9:46 a.m.