

Committee on Judicial Ethics  
Teleconference  
Thursday, September 18, 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 Thomas J. Corradino, Alternate. Staff present Attorney Viviana L. Livesay, Assistant Secretary.

### MINUTES

- I. With the above noted Committee members present, Judge Keller called the meeting to order at 9:35 a.m. Although publicly noticed, no members of the public were in attendance.
- II. The Committee members present, (with the exception of Judge Corradino, who abstained), approved the minutes of the August 27, 2014 meeting.
- III. The Committee ratified **Emergency Staff Opinion JE 2014-16** concerning whether a Judicial Official may publicly disclose his/her plans to retire and enter into the private practice of law after giving notice to the Chief Justice and Governor, but prior to leaving the bench.
- IV. The Committee discussed **Informal JE 2014-17** concerning whether a Judicial Official may serve on the board of directors of a condominium association.

A Judicial Official owns a condominium in Connecticut. The condominium association is a non-stock, non-profit corporation. The condominium association has been a party to approximately half a dozen lawsuits in the past ten years, generally as an additional defendant in a foreclosure action. According to the Judicial Official, the board of directors (hereinafter "Board") needs to approve taking any legal action and while there are no pending lawsuits, it is foreseeable that the Board will be asked to approve taking legal action in near future. The Judicial Official does not preside over matters that may be the subject of any litigation involving the condominium association.

Rule 1.2 of Code 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 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, or (4) appear to a reasonable person to be coercive.

Rule 3.7 of the Code deals specifically with participation with educational, religious, charitable, fraternal and civic organizations and activities. It provides that, subject to the general requirements in Rule 3.1, a judge may participate in activities sponsored by or on behalf of civic organizations not conducted for profit including, but not limited to "(a)(1) participating in the management and investment of the organization's or entity's funds; ... (a)(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."

Rule 3.10 of the Code prohibits a Judicial Official from practicing law, with exceptions for self-representation and, without compensation, giving legal advice to and drafting or reviewing documents for a member of the judge's family.

Rule 3.11 of the Code prohibits a Judicial Official from serving as an officer, director, manager, general partner or advisor of any business entity except for a business closely held by the Judicial Official or members or his or her family, or a business entity primarily engaged in investment of the financial resources of the Judicial Official or members of his or her family.

Based on the facts presented, the Committee unanimously determined that the Judicial Official may serve on the board subject to the following conditions:

1. The Judicial Official should regularly reexamine the activities of the Board to determine if it is proper to continue his or her relationship with the Board. In addition, the Judicial Official should regularly monitor whether the condominium association "will frequently<sup>1</sup> be

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<sup>1</sup> In [JE 2012-28](#), this Committee determined that a Judicial Official could serve on a community

engaged in adversary proceedings in the court of which the Judicial Official is a member or in any court subject to the appellate jurisdiction of the court of which the Judicial Official is a member and, if so, terminate his or her membership on the Board. Rules 1.2 and 3.7.

2. The Judicial Official should resign from the Board if such service would require the Judicial Official to be involved in frequent transactions with lawyers or persons likely to come before the court on which he or she serves. Rules 3.1 & 3.7(a)(6).
3. The Judicial Official should 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 non-public statement that might substantially interfere with a fair trial or hearing. Rule 2.10(a).
4. The Judicial Official should not use Judicial Branch resources for activities that concern the Board (except for incidental use). Rule 3.1(5).
5. The Judicial Official should not provide legal advice or otherwise engage in the practice of law. This includes, but is not limited to, the following activities: approving or discussing legal action or defense plans, selecting or dismissing attorneys, and drafting bylaws or reviewing them for legal sufficiency. Rule 3.10.

In reaching its decision, the Committee considered its prior decision in [JE 2013-01](#) (serving on the board of a homeowners association for an out-of-state property).

## V. Old Business

The Committee considered amending the “Policy and Rules of the Committee” to permit the issuance of opinions on issues pending before a court and agreed not to change the policy and to continue to evaluate inquiries on a case-by-case basis.

The Committee also discussed ways in which to better share opinions with other judges. Judges Keller and Dennis plan to meet with Judge Carroll to discuss possible options, which may include sending monthly email updates to judges with links to the summaries, providing additional training

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advisory board of a non-profit, non-law related division of a higher education institution even though the educational institution had been a party to, on average, three new lawsuits per year in the court on which the Judicial Official served, for each of the past six years.

for new and retiring judges, and offering an ethics update at the next CJI's Plenary Session.

VI. The meeting adjourned at 10:03 a.m.