

Committee on Judicial Ethics
Teleconference
Thursday, September 19, 2019

Committee members present via teleconference: Judge Vernon D. Oliver (Acting Chair), Judge Karen A. Goodrow, Judge Michael P. Kamp and Professor Carolyn W. Kaas.
Staff present: Attorney Viviana L. Livesay (Assistant Secretary) and Attorney Adam P. Mauriello (Assistant Secretary).

MINUTES

- I. Judge Oliver called the meeting to order at 9:33 a.m. Although publicly noticed, no members of the public were present.
- II. The Committee approved the minutes of the April 18, 2019 regular meeting. (Professor Kaas abstained.)
- III. The Committee discussed **Informal JE 2019-02** concerning whether a Judicial Official may receive an award at a gala event, which includes a silent auction, buffet dinner and awards ceremony, sponsored by a statewide religious organization. If the Judicial Official may accept the award, may the Judicial Official allow the religious organization to use the Judicial Official's name and biographical information (including judicial title) in literature advertising the event?

The facts of the inquiry are as follows: A Judicial Official received an invitation to attend and receive an award at a gala dinner in November. The event, hosted by a statewide religious organization, plans to honor three church and community leaders. Two of the recipients are laypersons and a third, the Judicial Official, will be receiving the "Clergyperson of the Year" award.

According to the organization, there will be no fundraising appeal at the event. However, the event will begin with a one hour silent auction followed by a buffet dinner and an award ceremony. The cost to attend the event is \$75/person and the organization confirmed that the ticket price covers the cost of the food and other fees associated with hosting the event. The organization is currently using the Judicial Official's name and biographical information in emails advertising the event, but has removed the word "fundraiser" from all publicity.

Rule 1.2 of the Code of Judicial Conduct states that a judge "should 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 1.3 of the Code states that a judicial official 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 of the Code states that a judge may engage in extrajudicial activities except as prohibited by law and subject to various restrictions including that the judge not participate in activities that (1) interfere with the 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 (a) states that subject to Rule 3.1, a judge may participate in activities sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities: "(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, 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."

Participation as a speaker or guest of honor is generally permitted as long as the event is not a fundraiser. See C. Gray, "[Key Issues in Judicial Ethics: A Judge's Attendance at Social Events, Bar Association Functions, Civic and Charitable Functions and Political Gatherings](#)," American Judicature Society (1996), p. 9.

The propriety of speaking at, or receiving an award or other recognition at, a non-law related fund-raising event has been the subject of at least four prior Committee opinions: [JE 2010-38](#) (Judicial Official may not serve as the keynote speaker for a non-law related civic organization's fund-raising program); [JE 2013-29](#) (Judicial Official may not serve as the master of ceremonies for a nonprofit organization's charitable fund-raising event because neither the organization nor the event concerns the law, the legal system or the administration of justice); [JE 2017-14](#) (Judicial Official was advised that he/she may not permit the inclusion of certain language in the program book giving special thanks to the Judicial Official because the fund-raising event did not concern the law, the legal system, or the administration of justice. The Committee determined that receiving an additional special recognition in a fund-raising event's program book qualified as "receiving an award or other recognition" under Rule 3.7 (a)(4)); and [JE 2018-16](#) (Judicial Official may not receive an award at a National Conference for Community and Justice fund-raising dinner because the activities of the organization cannot be characterized as being concerned with the law, the legal system, or the administration of justice).

Advisory committees from New York and Florida have concluded that silent auctions are fundraisers. In [New York Advisory Committee on Judicial Ethics](#)

[Opinion 15-91](#), the committee determined that a judge may not act as a clothing model at a not-for-profit fundraising luncheon/fashion show that includes a raffle and a silent auction. The New York committee stated, “even though [the judge’s] involvement will not be announced in advance, the fact remains that the fundraising event itself is billed as a fashion show and the fundraising will necessarily occur close in time to – and/or simultaneously with – the clothes modeling activities.” In [Florida Judicial Ethics Advisory Committee Opinion Number 2012-30](#), the committee concluded that a judge may not accept an award at a charity luncheon where a silent auction will take place simultaneously during the luncheon. The Florida committee noted that activities such as selling advertisements in a journal, holding a silent auction, or conducting a raffle are “indicia of fundraising.”

Based on the facts presented, including that the first hour of the gala event serves a fund-raising purpose and that the activities of the religious organization cannot be characterized as being concerned with the law, the legal system, or the administration of justice, the Committee determined that accepting an award at this fund-raising gala event would violate Rule 3.7 (a)(4) of the Code of Judicial Conduct.

IV. The meeting adjourned at 9:37 a.m.