

Committee on Judicial Ethics
Teleconference
Wednesday, October 17, 2012

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Edward R. Karazin, Vice Chair, Professor Jeffrey A. Meyer, Judge Maureen D. Dennis and Judge Christine E. Keller. 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 9:32 a.m. Although publicly noticed, no members of the public were in attendance.
- II. The Committee members present unanimously approved the Minutes of the October 3, 2012 meeting.
- III. The Committee ratified Emergency Staff Opinion JE 2012-29.
- IV. The Committee discussed Informal JE 2012-30 concerning whether a Judicial Official may (1) make a donation (goods for a charity auction or funds) to, and/or (2) pay for admission to and attend a fund-raising event hosted by The Children's Law Center (hereinafter, "CLC").

The Judicial Official has presided over family cases in the past and is likely to do so in the future. According to the CLC website, the CLC is a 501(c)(3) nonprofit organization that provides, inter alia, legal representation to children, low-cost mediation services and parent education, training and support for lawyers who represent children, and advocacy for systemic change regarding the rights and treatment of children. The cost to attend the fund-raising event is a minimum of \$100/person.

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 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 2.11(a) states in part that a judge “shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned....”

Rule 3.1 states in part that a judge “may engage in extrajudicial activities, except as prohibited by law.” The Rule goes on to note that when engaging in extrajudicial activities, the judge shall not participate, inter alia, in activities that will interfere with the proper performance of the judge’s judicial duties, lead to frequent disqualification, or appear to a reasonable person to undermine the judge’s independence, integrity or impartiality. Rule 3.1(1)-(3).

Rule 3.7 of the Code concerns a judge’s participation in educational, religious, charitable, fraternal, or civic organization and activities. Rule 3.7 states, in relevant part:

- (a) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those 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;....

Comment (2) to Rule 3.7 states that “[e]ven for law related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge’s participation in or association with the organization, would conflict with the judge’s obligation to refrain from activities that reflect adversely on a judge’s independence, integrity, and impartiality.”

Comment (3) to Rule 3.7 states in part that “[m]ere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of subsection (a)(4).”

Based upon the information provided, including that attorneys for the CLC regularly appear in the courts of Connecticut on behalf of children and that CLC actively participates in ongoing advocacy efforts at the state level, including the monitoring of legislative initiatives related to children and family law, the Committee determined that the Judicial Official may make a donation to CLC and may pay for admission to and attend a CLC fund-

raising event, but all subject to satisfaction of several conditions to ensure that this activity is compatible with the Code of Judicial Conduct.

(1) The Judicial Official may make a donation to the CLC, subject to the following conditions:

- (a) The Judicial Official should request and obtain adequate assurance from the organization that his or her identity as a donor will not be publicized and that his/her judicial title will not otherwise be used by the organization for promotional purposes;
- (b) For any future cases before the Judicial Official in which the CLC is involved as a party or counsel, the Judicial Official should consider whether the timing, nature and size of any donation may trigger obligations of disqualification or disclosure under Rule 2.11. Specifically, the Judicial Official should consider the possibility that (i) the timing, nature and size of the donation creates an actual personal bias or prejudice under Rule 2.11(a)(1) requiring disqualification, or (ii) that the timing, nature and size of the donation would otherwise create in a reasonable mind an appearance that the Judicial Official would not be impartial, such that the Judicial Official either should recuse under Rule 2.11(a) or disclose and potentially seek remittal in accordance with Rule 2.11(c). In addition, no matter how small the donation, the Committee recommends in light of the Judicial Official's affirmative obligations under Rule 1.2 that the Judicial Official may wish to take the precautionary measure of disclosing the donation for a reasonable period of time following the donation in any case in which CLC appears as counsel or party before the Judicial Official. The Judicial Official also should be mindful of the duty to avoid or minimize disqualifications as suggested by comment to Rule 2.7.

(2) The Judicial Official may pay for admission to and attend a fund-raising event hosted by the CLC, subject to the following conditions:

- (a) The organization does not regularly engage in adversary proceedings before the Judicial Official. See Rule 3.1(2);
- (b) The Judicial Official complies with the conditions for the making of a donation as described above (because payment for admission to a fund-raiser amounts to a donation to the organization);
- (c) The Judicial Official's attendance at the event does not raise concerns about coercion of other potential donors or exploitation of the judicial office, and does not demean the office, cast doubt

on the judge's impartiality, or interfere with the performance of judicial duties. See [Indiana Advisory Opinion #1-96](#);

- (d) The Judicial Official should not allow his/her title to be used in conjunction with the event (e.g., on name tags, by way of a public introduction, award or special recognition, such as sitting at a head table, etc.); and
- (e) If CLC appears before the Judicial Official as a party or counsel within a reasonable period of time following the fund-raising event, the Judicial Official should disclose the fact that he/she attended a CLC fund-raising event.

- V. The Committee discussed Informal JE 2012-31. The facts are as follows: A Judicial Official has been subpoenaed to testify as a fact witness at an administrative hearing regarding a personnel matter involving a close personal friend. The Judicial Official, if permitted to testify, will advise the administrative hearing panel that the Judicial Official is appearing in his or her personal capacity. The Judicial Official has inquired whether he or she (1) may testify to factual matters, and (2) if asked, may respond to questions about the friend's character.

The Judicial Official has known the friend for many decades and perhaps knows the friend better than anyone else. The Judicial Official was advised that counsel for the friend would only elicit factual testimony regarding the friend's health, levels of activity, discussions they had relevant to the administrative proceeding and related matters.

Rule 1.2 of the Code states in relevant part 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."

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." The commentary to Rule 1.3 states that "[a] judge may provide a reference or recommendation for an individual based on the judge's personal knowledge." Rule 1.3, cmt. (2)

Rule 3.2 of the Code provides that "[a] judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or legislative body or official," subject to certain exceptions not implicated here. The commentary to Rule 3.2 provides in part that "it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens," and that "[i]n engaging in such activities, however, a judge should state affirmatively that the judge is not acting in his or her official capacity and must otherwise exercise caution to avoid using the prestige of judicial office." Rule 3.2 cmt. (3).

Rule 3.3 provides that “[a] judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.” The commentary to Rule 3.3 makes clear that a judge may not testify as a character witness unless duly summoned and that “[e]xcept in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.” Rule 3.3 cmt. Rule 3.3 places no limitation on a judge’s testimony as a fact witness in any proceeding.

Based on the facts presented, including that the Judicial Official has been duly summoned by compulsory process and that the Judicial Official has unique knowledge of facts relevant to the proceeding based upon personal observations over many years due to the length of friendship with the person subject to the personnel matter at issue, the Committee determined that the Judicial Official may testify as to factual matters at the administrative hearing provided that the Judicial Official makes clear at the start of his or her testimony that he or she (1) is present pursuant to a subpoena, and (2) is present only in his or her personal capacity. The Committee further determined that based on the facts, which present unusual circumstances within the meaning of the Comment to Rule 3.3, the Judicial Official may testify, if asked, about the friend’s character and the Judicial Official does not have a duty to seek to discourage the parties from inquiring of the Judicial Official about the friend’s character.

VI. The meeting adjourned at 10:35 a.m.