

Committee on Judicial Ethics  
Teleconference  
Thursday, November 15, 2018

Committee members present via teleconference: Judge James T. Graham (Chair), Professor Sarah F. Russell, Judge Robert B. Shapiro, Judge Vernon D. Oliver and Judge Michael P. Kamp. Staff present: Attorneys Viviana L. Livesay and Adam P. Mauriello.

**MINUTES**

- I. Judge Graham called the meeting to order at 9:35 a.m. Although publicly noticed, no members of the public were present.
- II. The Committee approved the minutes of the August 16, 2018 regular meeting.
- III. The Committee discussed **Informal JE 2018-16** concerning whether Judicial Official may receive an award at a National Conference for Community and Justice fund-raising dinner. The facts are as follows: The National Conference for Community and Justice (NCCJ) is a human relations organization that promotes inclusion and acceptance by providing education and advocacy while building communities that are respectful and just for all. The [organization's mission](#) includes "celebrating the diversity of races, religions, cultures, genders, abilities & sexual orientations."

The NCCJ is recognized as a section 501(c)(3) non-profit organization under the Internal Revenue Code. The NCCJ advocates for those who experience bigotry, racism or injustice. They accomplish this through youth and adult programs in schools and in the workplace. The NCCJ does not engage in advocacy in court proceedings. According to the Vice Chair of the NCCJ Board, the educational and advocacy activities of the NCCJ cannot be characterized as being concerned with the law, the legal system or the administration of justice. As an organization, the NCCJ does not have a division that does legal work, work to change the law or work involving the administration of justice. Rather, it is a human relations organization that concentrates on the interactions between people and educates on social justice topics. The NCCJ's goal is to advocate through education on social justice issues and help empower people to fight against injustice to work toward more equity.

The award is given to multiple individuals each year and is presented at the fund-raiser. The awarding entity plans to use the name of all event honorees in the invitation.

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 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. C. Gray, "[Key Issues in Judicial Ethics: A Judge's Attendance at Social Events, Bar Association Functions, Civic and Charitable Functions and Political Gatherings](#)," (2000) 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 three prior Committee opinions. See, for example, [JE 2010-38](#) (judge may not serve as the keynote speaker for a non-law related civic organization's fund-raising program); [JE 2013-29](#) (judge 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); and [JE 2017-14](#) (the 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)).

Based on the facts presented, including that the activities of the NCCJ cannot be characterized as being concerned with the law, the legal system, or the

administration of justice, the Committee determined that receiving an award at this annual fund-raising event would violate Rule 3.7 (a)(4).

- IV. The Committee discussed **Informal JE 2018-17** concerning whether a Judicial Official may be listed as a reference or provide a letter of reference for a Support Enforcement Officer who is looking for a promotion within that unit.

The facts are as follows: The Support Enforcement Services unit and the employee who requested the reference regularly appear before the Judicial Official. Support Enforcement Officers (hereinafter, SEOs) are not attorneys and their duties are set forth in General Statutes § 46b-231(s), as well as Practice Book § 25a-30. Basically, when there is a default in the payment of alimony or support of children under a judgment of dissolution or separation or of support orders under a judgment of support, if necessary, the SEOs initiate and facilitate, but do not advocate on behalf of either party, an application to a Family Support Magistrate and issue an order requiring the party to appear before a Family Support Magistrate to show cause why the party should not be held in contempt. SEOs also review child support orders and can initiate and facilitate, but not advocate on behalf of either party, an action to modify the support order if it is determined upon the review that the order substantially deviates from the child support guidelines. In addition, SEOs can investigate the financial situation of the parties, or information about the status of participation in programs that increase a party's ability to fulfill the duty of support, and report their findings to a Family Support Magistrate and the parties and if so directed, seek to facilitate an agreement between the parties.

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 ... 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." The Commentary to Rule 1.3 states, in relevant part, as follows:

(2) A Judge may provide a reference or recommendation for an individual based on the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if the use of the letterhead would not reasonably be perceived as an attempt to exert pressure by reason of judicial office.

Rule 2.11 states, in relevant part, that a judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned.

General Statutes §51-39a prohibits a Judicial Official from using his or her judicial office or confidential information received through holding judicial office to obtain financial gain for himself or herself, a spouse, child, child's spouse, parent, brother, sister or a business with which the Judicial Official is associated.

The propriety of providing a letter of recommendation or serving as a reference for employment has been the subject of numerous Committee opinions. See, for example, [JE 2008-01](#) (subject to various conditions, a judge may provide a recommendation to an existing court employee applying for another Judicial Branch position), [JE 2008-03](#) (subject to various conditions, a judge may complete a letter of recommendation for a former law clerk applying for a position with the Attorney General's Office, even if the Attorney General's Office has appearances in various cases before the judicial official), [JE 2008-26](#) (subject to various conditions, a judge may provide a recommendation specific to the position applied for to a court employee seeking a position with the Judicial Branch in the judicial district where the Judicial Official is currently assigned), [JE 2009-08](#) (subject to various conditions, a judge may serve as a reference for an applicant to a municipal police department), [JE 2009-13](#) (a judge may not provide a letter of recommendation to two US Senators with respect to a person applying for a position with the federal court (US Marshal), but may be listed as a reference and respond if contacted), [JE 2011-01](#) (subject to various conditions, an attorney may list a judge as a reference on the attorney's Judicial Selection Commission application), [JE 2011-18A & 18B](#) (a retiring judge may seek letters of recommendation from judges familiar with his or her work, but the retiring judge must wait until his or her departure from the bench to do so), [JE 2011-19](#) (a judge should not voluntarily contact the Governor's Legal Counsel to recommend another judge for higher office, but subject to various conditions may serve as a reference), [JE 2012-27](#) (subject to various conditions, a judge may provide a letter of recommendation to the Office of Chief Public Defender for an attorney applying for a supervisory public defender position where the attorney, based upon the Judicial Official's current assignment, was not appearing before the Judicial Official and would not appear before the Judicial Official if promoted, although other public defenders regularly appeared before the Judicial Official, and noting that while the recommendation is for a government position, the proposed activity does not involve inappropriate political activity), [JE 2013-32](#) (a Judicial Official may not consent to the use of his or her name as a reference for an Executive Branch employee applying for a position at another Executive Branch agency where the employee's current agency regularly appears before the Judicial Official in adversarial proceedings and the employee regularly appears before the Judicial Official or prepares records for use by a co-worker who appears before the Judicial Official), [JE 2015-11](#) (subject to various conditions, a Judicial Official may provide a letter of reference to the Attorney General's Office in connection with an application by a Temporary Assistant

Clerk), [JE 2016-03](#) (a Judicial Official in a smaller Judicial District that hears criminal matters may not provide a letter of recommendation to the Office of Chief Public Defender for an attorney who regularly appears before the Judicial Official and would continue to appear before the Judicial Official if the attorney was selected for the position as it would require frequent recusal, both presently and in the future with respect to cases handled by the Division of Public Defender Services), and [JE 2016-11](#) (subject to various conditions, a Judicial Official may reach out to an assistant clerk recommending that he or she apply for a position with an out-of-state law firm for their Connecticut office).

While an SEO is not an attorney and the Practice Book clearly states that the position may initiate and facilitate various matters but in doing so is not to advocate on behalf of either party, I believe that an SEO is more analogous to an attorney than a courtroom clerk. An SEO testifies in the capacity of an expert witness, subject to examination by the parties or their counsel. Like in opinion [JE 2016-03](#), where a factor was the small size of the judicial district, thereby requiring the public defender to frequently appear before the Judicial Official, there is a very limited number of Family Support Magistrates who sit in any particular judicial district.

Based on the facts presented, including that the SEO regularly appears before the Judicial Official and the SEO's testimony is a factor that the Judicial Official must weigh in rendering any contested decision, the Committee determined that consistent with opinions [JE 2013-32](#) and [JE 2016-03](#), the inquiring Judicial Official may not serve as a reference or provide a letter of recommendation.

- V. The Committee approved the proposed editorial change to JE 2015-11 Informal Summary.
- VI. The meeting adjourned at 9:49 a.m.