

Committee on Judicial Ethics
Teleconference
Tuesday, November 15, 2011

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Edward R. Karazin, Jr., Vice Chair, Professor Jeffrey A. Meyer, Judge Maureen D. Dennis and Judge Thomas J. Corradino, Alternate. Staff present: Martin R. Libbin, Secretary and Viviana L. Livesay, Assistant Secretary.

MINUTES

- I. With the above noted members present, Justice Schaller called the meeting to order at 9:32 a.m. Although publicly noticed, no members of the public attended.
- II. The Committee members present unanimously approved the Minutes of the November 4, 2011 meeting.
- III. The Committee considered Judicial Ethics Informal 2011-26. The issues are as follows: (1) May a Judicial Official contract with a state technical school for the provision of home improvement services to be performed by its technical school students at the Judicial Official's home? The technical school's program is open to the general public and the student services are provided at a substantially discounted hourly rate. The discount reflects the fact that the work is performed by students who are learning a trade and may not be completed in an expeditious manner. (2) May a Judicial Official contract for home improvement services to be performed by a state technical school employee who has a private business providing home improvement services?

The Judicial Official, a judicial nominee, entered into two contracts with the technical school and paid for work to be completed prior to attaining judicial-nominee status. The contracted work has commenced, but is incomplete and ongoing. The Judicial Official originally intended that additional home improvement work would be done. Although the Judicial Official and the school orally agreed on the nature of the additional work, the Judicial Official indicated that he/she is not obligated with respect to any additional work.

The technical school contract notes that "educational production work is selected on the basis of instructional value and the instructional program takes precedence over all work performed by the school including timeliness for job." The contract further states, in part, that "the state of Connecticut shall assume no liability under the terms of this agreement. Inasmuch as the state of Connecticut utilizes inexperienced student labor in an effort to enhance training for the particular trade skill(s), the state assumes no liability regarding negligence or carelessness of the work performed pursuant to this contract." The contract contains a "conflict of interest" provision whereby the purchaser must indicate that he or she is not a state employee, public

official, member of the immediate family of a state employee or public official, or associated in a business with a state employee or public official, as each of those terms is defined in the agreement. It should be noted that the terms “public official” and “state employee” specifically exclude a judge of any court, either elected or appointed. The language in the contract follows the format of C.G.S. § 1-79(k) and (m), which define, respectively, “public official” and “state employee” for purposes of the statutory Code of Ethics.

With respect to the second inquiry, the work would be performed by the state technical school employee outside of the employee’s normal work hours. The state employee performs this type of work for other customers, and unlike the state contract, that is at a deep discount reflecting work done by students learning a trade, the state employee charges a significantly higher rate reflecting the state employee’s experience. The Judicial Official does not work with or supervise the state employee in any manner.

Issue (1): Based on the facts presented, the Committee unanimously determined that it would be improper for a Judicial Official to take advantage of a statutory exclusion contained in the Code of Ethics that is not available to any other state employee or public official. The Committee concluded that a Judicial Official may not enter into a contract with a state technical school for the provision of home improvement services because doing so would violate Rule 1.2’s requirement that judges shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, insofar as a reasonable person could question whether the Judicial Official received access to discounted services by reason of his official judicial position. In rendering its opinion, the Committee considered the legislative history of C.G.S. § 1-79 which supports the Committee’s view that judges were excluded from the Code of Ethics in deference to the judiciary’s own Code of Judicial Conduct. The Committee further concluded that a judge’s contracting for discounted services for his personal benefit from a state entity could raise concerns under Rule 1.3 (avoiding abuse of the prestige of judicial office) and Rule 3.13 (receipt of benefits under circumstances that “would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality”).

A majority of the Committee (by a vote of 4-1) further concluded that, based on the circumstances of this case, the proscription against entering into contracts with the state technical school should not apply to the inquiring Judicial Official, who contracted for work as a member of the general public prior to becoming a nominee. Under the facts of this case, the Judicial Official may ethically permit the original work, contracted and fully paid for, to be completed.

Issue (2): Based on the facts presented, including that the state technical school employee: (1) is not a Judicial Branch employee and that the Judicial Official does not work with or supervise the employee in any manner, (2) will be providing services outside of the employee’s normal work hours, and (3)

performs this type of work for other customers, the Committee unanimously concluded that the proposed conduct does not violate Rule 1.2 (promoting public confidence and avoiding the appearance of impropriety). Therefore, the Judicial Official may contract with the state technical school employee for home improvement services to be performed at the Judicial Official's home.

- IV. The Committee considered Judicial Ethics Informal 2011-27 concerning whether a Judicial Official in violation of the Code of Judicial Conduct by allowing to serve as his/her courtroom clerk a court employee who is an immediate family member of a criminal defendant whom the Judicial Official sentenced.

The court employee, who is not an attorney, performs courtroom clerk and related duties, but does not perform legal research. The court employee is assigned by someone other than the inquiring Judicial Official and is one of only a couple of staff members who are rotated among the assigned judges.

The court employee intervened in his/her family member's plea acceptance and sentencing by convincing the prosecutor to reduce the charges. The Judicial Official sentenced in accordance with the plea agreement and was not aware of the employee's relationship to the defendant or involvement with plea negotiations at the time of accepting the defendant's plea and imposing sentence. The defendant is still subject to Judicial Branch supervision (i.e., probation), and it is foreseeable that the case may return to the Judicial Official's court at some point during the period of supervision.

Based on the facts presented, the Committee unanimously concluded that the Code does not prohibit the Judicial Official from allowing the court employee to work as a clerk in the Judicial Official's courtroom. The Judicial Official should, however, take appropriate steps to insulate the court employee from handling any proceeding in which his or her relative is involved so as to avoid any impression that the employee is "in a position to influence the judge's judicial conduct or judgment" in violation of Rule 2.4(c). Should insulation be unrealistic due to the small number of employees assigned to work at the particular court location, the Judicial Official should recuse him/herself under Rule 2.11 and transfer any cases involving the relative to another court in order to maintain public confidence in the judiciary and avoid the appearance of impropriety consistent with the requirements of Canon 1 and Rule 1.2.

- V. The meeting adjourned at 9:57 a.m.