

Committee on Judicial Ethics
Teleconference
Wednesday, December 12, 2012

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 Christine E. Keller. Staff present: Attorney Viviana L. Livesay, Assistant Secretary.

MINUTES

- I. With the above noted Committee members present, Justice Schaller called the meeting to order at 9:36 a.m. Although publicly noticed, no members of the public were in attendance.
- II. Four of the Committee members present approved the Minutes of the November 20, 2012 meeting. (Judge Karazin abstained.)
- III. The Committee discussed Informal JE 2012-33 concerning whether a Judicial Official may serve as a member of a community advisory board for a hospital consortium that seeks state-funding for its health screening program.

A Judicial Official has been asked to participate on an advisory board at a local hospital. The hospital, a not-for-profit acute care community hospital, is part of a hospital consortium that will be applying for a state grant to fund access to certain health screening for uninsured and underinsured clients. The consortium consists of five legally affiliated hospitals that are a part of a regional healthcare system.

Each grant recipient is required to develop, support and work with a standing community advisory board (“advisory board”). The purpose of such an advisory board is to “complement the knowledge and skills of the health screening program through representation of key stakeholders in the community service who can provide an external perspective on the program, advocate for the program, increase its visibility, provide guidance, communicate opinions, share expertise, support the coordination of services, and contribute to improving the health of the community.” Such an advisory board would serve in a non-binding advisory capacity. It would have no formal authority to govern the health screening program, nor would it have fiduciary responsibility. Decisions regarding how funds are allocated and used are determined at the administrative level of the regional healthcare system. The advisory board’s advocacy role is described as giving direction to the staff of the health screening program team on how best to recruit patients and raise community awareness of the program.

Each hospital in the consortium must submit the names of its own advisory board members and each member is required to submit a letter of support. According to a hospital representative, it is best if an advisory board member is either a person who has been afflicted with one of the diseases which is part of the health screening program or is a person known in the community.

The various hospitals that make up the consortium have over 2,100 cases, covering a 10 year period, listed on the Judicial Branch website. The vast majority of the cases are either collection matters or foreclosures (in which the hospital is a defendant due to its lien on the foreclosed property). Other cases include medical malpractice and defective premises claims.

Rule 3.7(a)(6) of the Code states that a judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for profit, “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.”

Based upon the information provided, including that the Judicial Official has been asked to serve as a non-legal advisor to a consortium of five hospitals that are frequently engaged in adversary proceedings in the Connecticut Superior Court, the Committee unanimously determined that the Judicial Official should not serve on the community advisory board consistent with the requirements of Rule 3.7(a)(6).

- IV. The Committee discussed Informal JE 2012-34 concerning whether a Judicial Official may accept an offer to attend a law school training program at a reduced rate or free of charge.

A Judicial Official is an adjunct faculty member at a law school. The law school hosts a training program for which a fee is charged in the range of \$1,100. In the past, the school has offered certain of its full-time faculty the opportunity to attend the program free of charge. The Judicial Official has been offered the opportunity to attend the program either at a reduced rate or possibly free of charge. The training program is relevant to the courses that the Judicial Official teaches at the law school as well as to the Judicial Official’s judicial duties. The law school has stated that it will be offering this opportunity to other adjunct faculty in the future on the same terms that it is offered to the Judicial Official.

Rule 2.10 of the Code of Judicial Conduct states in relevant part that a judge “shall 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....”

Rule 3.1 of the Code states that a judge may engage in extrajudicial activities, except as prohibited by law; however, a judge shall not participate in activities that (1) will 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, (4) appear to a reasonable person to be coercive, or (5) make use of court premises, staff or resources except for incidental use or for activities that concern the law, the legal system or the administration of justice, or the use is permitted by law.

Subsection (a) of Rule 3.13 states that a judge shall not accept any gift if the acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity or impartiality. Subsection (b) states, in relevant part, that, unless otherwise prohibited by law, a judge may accept, inter alia, "gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11." Subsection (c) states, in relevant part, that unless prohibited by law or subsection (a), a judge may accept, subject to applicable reporting under Rule 3.15, invitations to attend without charge "an event associated with the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge."

Rule 3.15 of the Code requires the reporting of gifts pursuant to Rule 3.13(c) valued at over \$250 from the same source in a single calendar year, and reimbursement of expenses and waivers of fees permitted by Rule 3.14 in excess of \$250 from a source within a calendar year.

Based upon the information provided, the Committee determined that the Judicial Official may accept the offer to attend the training program at a reduced rate or free of charge subject to the following conditions:

- (1) The Judicial Official's attendance at the training program does not interfere with the proper performance of judicial duties. Rule 3.1.
- (2) The Judicial Official does not discuss during the training program any matter pending or impending in any court as specified in Rule 2.10 (a).
- (3) The Judicial Official does not conclude that attendance and acceptance of the free/reduced rate for the training program would appear to a reasonable person to undermine the Judicial Official's independence, integrity or impartiality as specified in Rule 3.13.

(4) The Judicial Official reports the gift in accordance with Rule 3.15.

V. The meeting adjourned at 9:50 a.m.