

Committee on Judicial Ethics
Teleconference
Thursday, July 20, 2017

Committee members present via teleconference: Judge Christine E. Keller (Chair), Judge Maureen D. Dennis (Vice Chair), Judge Robert B. Shapiro, Professor Sarah F. Russell and Judge James T. Graham (Alternate). Staff present: Attorney Martin R. Libbin (Secretary).

MINUTES

- I. Judge Keller called the meeting to order at 9:32 a.m. Although publicly noticed, no members of the public were present.
- II. Judges Keller, Dennis, Shapiro and Graham approved the minutes of the June 15, 2017 regular meeting. Professor Russell abstained.
- III. The Committee discussed **Informal JE 2017-06** concerning whether Judicial Officials may serve on a United Way committee that is responsible for (1) allocating funds to recipient organizations, or (2) governance and strategic planning (but not fundraising). The United Way is a 501(c) (3) nonprofit charitable organization whose mission is to help meet the needs of Connecticut and its residents by providing information, education and connection to services. The United Way, on its web page, states that it connects people to services through the 2-1-1 call line, provides crisis intervention and emergency response, and is a partner with the state and various communities to implement strategies that lead to community and population-level impact, including efforts to improve education, income, health and access to basic needs for everyone in Connecticut.

According to the Judicial Branch's Case Lookup, the United Way of Connecticut or one of its local entities has been a party to two lawsuits over the past ten years in the court of which the inquiring Judicial Officials are a member. One of the suits, a mortgage foreclosure, is still pending. In that case, the United Way of Greater Hartford's interest is a parking agreement that is subordinate to the mortgage that is being foreclosed.

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 3.1 of the Code concerns extrajudicial activities and sets forth general limitations on such activities, such as not using court premises, staff or resources, except for incidental use or for activities that concern the law, the legal system, or the administration of justice unless otherwise permitted by law, and not participating in activities that (1) 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, stationery, or other resources, except for incidental use.

Rule 3.7 (a) of the Code deals specifically with participation with educational, religious, charitable, fraternal and civic organizations and activities. It provides that, subject to the general requirements in Rule 3.1, a judge may participate in activities sponsored by or on behalf of educational organizations not conducted for profit including, but not limited to the following:

- (1) assisting such an organization or entity in planning related to fund-raising and participating in the management and investment of the organization's or entity's funds;
- (2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority;
- (3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;
- (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;
- (5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and
- (6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, 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.

In [JE 2011-28](#), at issue was whether a Judicial Official could provide a letter of support to a law-related organization for the organization to use in soliciting donations. The Committee determined, in relevant part, as follows:

Rule 3.7(a)(5) permits a Judicial Official to make recommendations to a public or private fund-granting organization or entity in connection with its programs and activities if the organization or entity is concerned with the law, the legal system or the administration of justice, however, **Rule 3.7(a)(5) should be viewed as applying in the context of the Judicial Official serving on the Board of the fund-granting organization and the fund-granting organization (as opposed to the grant recipient) must be concerned with the law, the legal system or the administration of justice.** (Emphasis added.)

In [JE 2012-28](#), at issue was whether a Judicial Official may accept an appointment to serve on a community advisory board of a nonprofit, non-law-related division within a higher education institution. According to the facts, the entity was not frequently involved in litigation in Connecticut courts and service on the advisory board would not interfere with the performance of judicial duties. The Committee members unanimously concluded that the Judicial Official may serve on the advisory board subject to the following seven conditions:

1. The Judicial Official should regularly reexamine the activities of the advisory board to determine if it is proper to continue his or her relationship with the advisory board. Rule 1.2;
2. The Judicial Official may not use Judicial Branch resources for activities that concern the advisory board. Rule 3.1(5);
3. The Judicial Official may not continue to serve on the advisory board if the institution participates in activities that lead to frequent disqualification of the Judicial Official or otherwise becomes frequently engaged in adversary proceedings in the court on which the Judicial Official serves. Rules 3.1 & 3.7(a)(6);
4. The Judicial Official may assist the organization in planning related to fund-raising and may participate in the management and investment of its funds. Rule 3.7(a)(1);
5. The Judicial Official may solicit contributions for the organization, but only from members of the Judicial Official's family (as that term is defined in the Code) or from Judicial Officials over whom the soliciting Judicial Official does not exercise supervisory or appellate authority. The Judicial Official may not engage in a general solicitation of funds on behalf of the organization. Rule 3.7(a)(2);

6. The Judicial Official may appear or speak at, be featured on the program of, and permit his/her title to be used in connection with an organization event, but not if the event serves a fund-raising purpose. Rule 3.7(a)(4); and
7. The Judicial Official may permit his/her name and position with the organization to appear on letterhead used by the organization for fund-raising or membership solicitation but may permit his/her judicial title to appear on such letterhead only if comparable designations are used for other persons. Rule 3.7, cmt (4).

Based on the facts presented, including that the United Way is a charitable or civic non-profit organization that is not concerned with the law, the legal system or the administration of justice, and it is not frequently involved in litigation, the Committee unanimously determined that (1) a Judicial Official may not serve on a committee responsible for the allocation of funds, and (2) a Judicial Official may serve on the governance and strategic planning committee subject to the same seven conditions imposed in JE 2012-28, as noted above.

- IV. The Committee discussed **Informal JE 2017-07** concerning whether a Judicial Official may belong to the Connecticut Criminal Defense Lawyers' Association (CCDLA)? The home page of the CCDLA website states the following, among other things, under the heading "What is the CCDLA?":

The Connecticut Criminal Defense Lawyers Association was founded in 1988 to be the voice of the criminal defense bar and to advocate for the preservation of the constitutional rights of the accused.

The CCDLA has members in both private practice of criminal defense as well as state and federal public defenders. No prosecutors are permitted to be members of the organization.

CCDLA's online application form reflects its prohibition on prosecutors. See <http://www.ccdla.org/join-ccdla/>. In addition, CCDLA engages in legislative advocacy by "submitting testimony annually on bills important to the criminal defense community and offering input on the confirmation process for judges."

Rule 1.2 of the Code of Judicial Conduct provides that a judge "shall 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 3.1 of the Code concerns extrajudicial activities and sets forth general limitations on such activities, such as not using court premises, staff or resources, except for incidental use or for activities that concern the law, the

legal system, or the administration of justice unless otherwise permitted by law, and not participating in activities that (1) 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, or (4) appear to a reasonable person to be coercive.

Rule 3.7(a) provides that 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...(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, 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." The rule's commentary 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." Rule 3.7, cmt. (2).

In [JE 2013-25](#), this Committee considered whether a Judicial Official could accept an invitation from the Connecticut Trial Lawyers Association ("CTLA") to attend a dinner at its annual meeting as a guest of the CTLA. Based on the facts presented, including that membership in the CTLA was open to all and that the CTLA's stated purpose was to create and maintain a more just society by preserving individual rights within the justice system, the Committee determined that the Judicial Official could accept the invitation subject to certain conditions.

In [JE 2010-06](#), this Committee determined that a Judicial Official should decline to accept an honorary lifetime membership in a law enforcement alumni association "in view of the high likelihood of members of the association appearing before the Judicial Official and, in general, the impression of partiality to law enforcement that may be unintentionally created."

In [JE 2009-17](#), this Committee considered whether a Judicial Official could join the American Board of Trial Advocates (ABOTA) as a member in the "judge" category. ABOTA was an organization "whose stated purposes include, inter alia, elevating the standards of integrity, honor and courtesy in the legal profession, aiding in the education and training of trial lawyers, preserving the jury system, and promoting the efficient administration of justice and constant improvement of the law." Membership was limited to attorneys and judges who met certain experience requirements, and required approval of a local and/or national board. Based upon the facts presented, the Committee determined that membership was permissible subject to certain conditions.

The Committee observed that although the CCDLA appears to be an entity concerned with the "law, the legal system, or the administration of justice" under Rule 3.7, the CCDLA's stated purpose is to advocate for the defense bar and the accused; it prohibits prosecutors from joining as members; and it engages in legislative advocacy to further its agenda, including making recommendations to the General Assembly on judicial appointments. The Committee concluded that membership in a one-sided organization dedicated to advancing the interests of a particular category of parties and attorneys could reflect negatively on the Judicial Official's impartiality and independence and create the appearance of impropriety in violation of Rule 1.2 and comment 2 to Rule 3.7. Therefore, the Committee unanimously determined that the Judicial Official should not belong to the CCDLA as a member. In addition to the authorities cited above, the Committee also considered Florida Opinion 95-21 (judge's membership in Academy of Florida Trial Lawyers, which limited membership to attorneys who dedicated less than 40% of their practice to civil defense matters, would "cast reasonable doubt on the judge's capacity to act impartially as a judge"); Illinois Opinion 2001-08 (judge should not accept complimentary membership in specialized bar association whose member attorneys generally represent a single side in legal disputes); and New York Opinion 12-44 (judge should not participate in training program available only to prosecutors because "it would be difficult, if not impossible, for a judge who is presiding over and critiquing a mock trial as part of a trial advocacy program for a 'one-sided' audience to avoid the appearance that he/she is teaching or giving partisan advice on litigation strategy or tactics to that 'side'").

- V. The Committee discussed **Informal JE 2017-08** concerning whether a Judicial Official must unsubscribe from e-mails from organizations that the Judicial Official does not belong to but which organizations send e-mails concerning political or similar issues.

Rule 1.2 of the Code of Judicial Conduct provides that a judge "shall 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 2.1 states that "[t]he duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities."

Rule 2.4 (b) states that a "judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment."

Rule 2.4 (c) states that a “judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge’s judicial conduct or judgment.”

Rule 3.1 concerns extrajudicial activities and sets forth general limitations on such activities, such as not using court premises, staff or resources, except for incidental use or for activities that concern the law, the legal system, or the administration of justice unless otherwise permitted by law, and not participating in activities that (1) 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, or (4) appear to a reasonable person to be coercive.

Rule 3.7(a) provides that 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,...(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, 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.” The rule’s commentary 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.” Rule 3.7, cmt. (2).

Rule 4.1, entitled Political Activities of Judges in General, states in relevant part, as follows:

- (a) Except as permitted by law, or by Rules 4.2 and 4.3, a judge shall not:
 - (1) act as a leader in, or hold an office in, a political organization;
 - (2) make speeches on behalf of a political organization;
 - (3) publicly endorse or oppose a candidate for any public office;
 - (4) solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate for public office...
 - (8) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or
 - (9) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office...

(c) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

In [JE 2016-16](#), the Committee determined that a Judicial Official could join and donate money to an organization "concerned with the law, the legal system, or the administration of justice" under Rule 3.7 that also engaged in some political activity, subject to several conditions. The Committee also concluded, however, that the Judicial Official should not join or donate to a more overtly political organization because such membership could constitute improper political activity under Rule 4.1.

In [JE 2013-06](#), the Committee determined the Code of Judicial Conduct does not prohibit a Judicial Official from participating in electronic social media (ESM). The Committee observed, however, that participation in ESM "clearly is fraught with peril for Judicial Officials because of the risks of inappropriate contact with litigants, attorneys, and other persons unknown to the Judicial Officials and the ease of posting comments and opinions." Accordingly, the Committee imposed twelve conditions on a Judicial Official's use of ESM.

In [JE 2012-32](#), the Committee determined that a Judicial Official should not submit an op-ed article for publication in a local newspaper because, among other things, the article would suggest the Judicial Official's political priorities and views and draw attention to certain political issues/controversies important to the Judicial Official.

In [JE 2012-23](#), the Committee determined that a Judicial Official should not participate in a "live call-in" radio talk show regarding a high-profile decision of the U.S. Supreme Court "because of the prospect that the Judicial Official could be asked about or enmeshed in a discussion about the merits of the decision or about political consequences related to the case."

In [JE 2010-24](#), the Committee determined that a Judicial Official should not make contributions to federal and non-Connecticut, as well as Connecticut, political organizations and candidates.

Due to the lack of specific facts about the nature of the organizations and the content of the e-mails in question, the Committee declined to provide a "yes" or "no" reply to this inquiry. The Committee observed that the Judicial Official will be responsible in each instance for determining whether the receipt of e-mails from a particular organization is consistent with the above-cited authorities. In addition, the Committee set forth several factors that the Judicial Official should consider in determining whether to continue to receive e-mails, and imposed several conditions on the Judicial Official's receipt and reading of such e-mails. The Committee's opinion applies only to e-mails received by a Judicial Official on his or her personal e-mail account, and only to the reading of such e-mails. The

Committee specifically noted that the issue of e-mail replies or conversations is beyond the scope of the Judicial Official's inquiry and therefore is not addressed in the Committee's opinion.

The Judicial Official should consider the following in deciding whether he or she should unsubscribe from e-mails from organizations concerning political and similar issues:

- 1) Whether the organization is concerned with the law, the legal system, or the administration of justice under Rule 3.7;
- 2) Whether the organization is a "political organization" for purposes of Rule 4.1;
- 3) The extent to which the Judicial Official's identity would be revealed to other recipients; and
- 4) The content of the e-mails, including whether they concern matters that would be subject to Rule 2.10 (e.g., statements regarding a matter pending or impending in any court);

The Judicial Official's receipt and reading of such e-mails is subject to the following conditions:

- 1) The Judicial Official should not form relationships with persons or organizations that may convey an impression that these persons or organizations are in a position to influence the Judicial Official. Rule 2.4
- 2) A Judicial Official should disqualify himself or herself from a proceeding when the Judicial Official's e-mail communications with a lawyer is likely to result in bias or prejudice concerning the lawyer for a party or the party. Rule 2.11
- 3) The Judicial Official should not use his or her judicial title in connection with the e-mails, and should request and obtain adequate assurances that his or her judicial title will not be publicized or used by the organization for any purpose. Rule 1.3
- 4) The Judicial Official should regularly reexamine the activities and rules of the organization to determine whether it is proper for the Judicial Official to receive communications from it and should carefully consider whether specific viewpoints, programs or activities of the organization may undermine confidence in the Judicial Official's independence, integrity and impartiality. Rules 3.1, 3.7 and 4.1
- 5) The Judicial Official's identity must not be revealed to other e-mail recipients.

- VI. The Committee discussed **Informal JE 2017-09** concerning whether a Judicial Official may keep a license plate that identifies the Judicial Official as a retired police commissioner.

Rule 1.2 of Code states that a judge shall 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.

The propriety of using vanity plates has been considered in at least one jurisdiction. The New York ethics advisory commission reviewed the propriety of using judicial vanity plates on personal vehicles. The Committee noted that the concerns raised with respect to judicial vanity plates apply equally to judges who wish to use other types of specialty status license plates.

A dozen states and the District of Columbia authorize judicial license plates on the personal vehicles of judges. In New York, its advisory committee on judicial ethics concluded that there is no ethical prohibition against a judge displaying a license plate on a judge's car that identifies the judge as a member of a judge's association or indicating that the vehicle registrant is a judge. (See New York Opinions [07-213](#) and [12-141](#)).

Concerns over this practice were evaluated in greater detail in 2012 when the New York State Commission on Judicial Conduct ("NY Commission") began looking into the propriety of judicial vanity plates after an incident involving a justice from a town court who had a vanity plate denoting her as a member of the State Magistrates Association ([Matter of Schilling](#), 2013 Annual Report 286). The justice was issued a ticket by a state trooper which later vanished and the NY Commission subsequently removed the justice from office. In the Commission's written opinion, it identified systemic problems and promised to issue a public report to address these concerns.¹

On May 7, 2013, the NY Commission issued its [report](#) and concluded that "[d]isplaying a judicial license plate on a personal vehicle does not *per se* create an appearance of impropriety." The report generated much criticism and one of the panel's own members issued a scathing dissent and slammed the report as "an exercise in evasion." The dissent criticized the issuance of special license plates to "public officers" and others that publicly announce their status. The dissenting member opined that "driving or parking a car with judicial plates violates the rule governing judicial conduct because either the purpose or the effect of displaying judicial plates appears to 'lend the prestige of judicial office' for the personal benefit of the judge." The NY Commission report also received much negative press. The main concern expressed by critics is that these specialty plates appear to invite special treatment by publicly announcing the holder's special status.

¹ The footnote in the *Schilling* determination states: "The Commission has repeatedly evaluated cases of judges attempting to use their judicial office to influence the disposition of traffic violations. This case represents a stark example of this problem and raises a systemic issue of how judicial license plates distort the normal process of enforcing traffic laws and the delicate position faced by law enforcement officers when they stop a vehicle with judicial plates. The Commission has decided that a public report is required to address the issue of whether or not the Rules Governing Judicial Conduct may be violated by the use of judicial license plates in the context of judges, in effect, using their judicial office to avoid the consequences."

The Committee also noted that by operating a vehicle with a retired police commissioner vanity license plate, the Judicial Official is publicly displaying his or her past affiliation with law enforcement. In [JE 2010-16](#), this Committee determined that a Judicial Official should decline to accept an honorary lifetime membership in a law enforcement alumni association, in view of the high likelihood that members in the association will appear before the Judicial Official and, in general, the impression of partiality to law enforcement that may be unintentionally created.

Based on the facts presented, the Committee determined that the inquiring Judicial Official should not display the retired police commissioner license plate on his or her personal vehicle because it violates Rule 1.2's requirement that a judge shall avoid impropriety or the appearance of impropriety and because it may unintentionally create the impression of partiality to law enforcement.

VII. The meeting adjourned at 9:51 a.m.