

Committee on Judicial Ethics  
Teleconference  
Thursday, December 17, 2015

Members present via teleconference: Judge Christine E. Keller, Chair, Judge Maureen D. Dennis, Vice Chair, Judge Barbara M. Quinn, Professor Sarah F. Russell and Judge Angela C. Robinson. Staff present: Attorney Martin R. Libbin, Secretary and Attorney Viviana L. Livesay, Assistant Secretary.

### MINUTES

- I. With the above noted Committee members in attendance, Judge Keller called the meeting to order at 9:35 a.m. Although publicly noticed, no members of the public were present.
- II. The Committee members present approved the minutes of the November 19, 2015 meeting.
- III. The Committee ratified **Emergency Staff Opinion JE 2015-20**. The facts are as follows. A Judicial Official's spouse is a partner in a mid-sized law firm. That firm has filed a firm appearance in a case and has a fee-splitting agreement with a second law firm with respect to that case. The Judicial Official does not know the specifics of the fee-splitting arrangement between the spouse's law firm and the second law firm.

Based upon the above, the Judicial Official inquired whether (1) he or she has a duty to recuse him or herself or to disclose the existence of the fee-splitting arrangement when the second firm appears in an unrelated matter before the Judicial Official, and (2) if so, do the same requirements apply if the Judicial Official limits his or her role to conducting pretrials, handling continuance requests and assigning the cases to the trial judge?

Rule 1.2 states 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 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 to allow others to do so."

Rule 2.4 states, in relevant part, that “(b) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment. (c) 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 2.11(a) states, in relevant part, as follows:

The judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned including, but not limited to, the following circumstances:

- (1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer ...
- (2) The judge knows that the judge, the judge’s spouse ... is (A) a party to the proceeding ...; (B) acting as a lawyer in the proceeding; (C) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or (D) likely to be a material witness in the proceeding.
- (3) The judge knows that he or she ... or the judge’s spouse ... has an economic interest in the subject matter in controversy or in a party to the proceeding.

Comment (4) to Rule 2.11 states as follows:

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge’s impartiality might reasonably be questioned under subsection (a) or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under subsection (a) (2) (C), the judge’s disqualification is required.

This inquiry was circulated to the Committee members and their input was solicited and received. Based upon the fact that the fee-splitting arrangement between two law firms is only in one case, it does not give rise to a reasonable basis to question a judge’s impartiality when the firm that has the fee-splitting arrangement with the judge’s spouse’s firm appears before the judge in unrelated matters. Unless the inquiring Judicial Official has a personal bias (favorable or unfavorable) about the second firm, in which case the Judicial Official should recuse him or herself and may not seek remittal of the disqualification, none of the potentially relevant specific circumstances requiring disqualification are applicable to the facts presented. This is not a situation where the Judicial

Official's relative or relative's firm will be appearing as counsel in a case before the Judicial Official. Furthermore, the Judicial Official's relative has no interest in the proceeding and will not be affected by the proceeding.

Since, in accordance with Comment (4) the Judicial Official is not disqualified if the Judicial Official's spouse is affiliated with a law firm provided (1) the judge's impartiality might not be reasonably questioned, and (2) the spouse does not have an interest in the law firm that could be substantially affected by the proceeding, a fortiori the Judicial Official is not disqualified from presiding over cases involving a law firm in which the Judicial Official's spouse's only "affiliation" is that their respective law firms have a case in common for which they have a fee-splitting arrangement.

Because the Judicial Official does not have a duty to recuse or disclose the fact of the fee-splitting agreement for a single case when the second firm appears unless the Judicial Official has a personal bias or prejudice involving that firm, the Judicial Official is not limited in the functions that he or she may perform with respect to that firm's cases which come before the Judicial Official.

- IV. The Committee ratified **Emergency Staff Opinion JE 2015-23** concerning whether a Judicial Official may attend a large annual holiday party hosted by a law firm. The law firm invites hundreds of people, including other lawyers that they litigate against, judges, politicians, business people, etc.

The party consists of food and entertainment. No one is charged or pays a fee to attend. Prior to his or her appointment as a Judicial Official, the inquiring Judicial Official was invited and attended the annual holiday party.

Rule 1.2 of the Code of Judicial Conduct states 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 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."

Rule 3.1 (3) of the Code prohibits participation in extrajudicial activities "that would appear to a reasonable person to undermine the judge's independence, integrity or impartiality." Comment (2) of Rule 3.1 encourages judges' participation in both law related and other extrajudicial activities because it "helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system."

Rule 3.13 (a) of the Code prohibits receipt of gifts, benefits or things of value if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. Rule 3.13 (b) lists items that a judge may accept without publicly reporting such acceptance. Those items include gifts or other things of value from friends, relatives or other persons whose appearance or interest in a proceeding before the Judicial Official would require the Judicial Official's disqualification, and ordinary social hospitality.

This inquiry was circulated to the Committee members and their input was solicited and received. At issue in this inquiry is whether the Judicial Official's attendance at a holiday party, where it is anticipated that attorneys and others who regularly appear in court, albeit the host law firm does not appear before the inquiring Judicial Official, would in a reasonable person's mind create an appearance of impropriety or undermine the judge's independence, integrity or impartiality and if attendance at the holiday party is consistent with ordinary social hospitality.

This Committee previously determined that judges may engage in social and recreational activities provided they do not detract from the dignity of the office or interfere with the performance of judicial duties. See [JE 2010-08](#) (Judicial Official may attend retirement party for prosecutor); [JE 2008-16](#) (Judicial Official should not attend law firm's five hour holiday party on board a river boat cruise ship); [JE 2009-04](#) (Judicial Official may spend several days with close personal friends, who are lawyers, at the friends' vacation home); [JE 2009-31](#) (Judicial Official may accept \$150 ticket to charity event to benefit a hospital from a doctor where neither the doctor nor the hospital have any cases pending before the Judicial Official, although the hospital does have cases pending in the court of which the Judicial Official is a member); [JE 2012-01](#) (Judicial Official should not attend retirement dinner hosted and paid for by the former partners of the retiring lawyer, who regularly appear before the Judicial Official); and [JE 2013-07](#) (Judicial Official should not participate in small social outing organized by the spouse of a foreclosure firm attorney whose cases make up a large portion of the Judicial Official's docket).

Cynthia Gray, in her paper entitled "A Judge's Attendance at Social Events, Bar Association Functions, Civic and Charitable Functions and Political Gatherings", on page 2, et seq., notes that generally judges are allowed to accept "ordinary social hospitality" and based upon that provision, a number of jurisdictions have allowed judges to attend law firm sponsored parties, including those celebrating the opening of an office, a holiday open house, a special birthday celebration, etc. The paper also notes that some jurisdictions have less permissive rules. The California judicial ethics committee, in its Advisory Opinion 43 (1994), notes that each judge must make his or her own decision regarding whether attendance at a party falls within the ambit of ordinary social hospitality, but defines ordinary social hospitality as "that type of social event or other gift which

is so common among people in the judge's community that no reasonable person would believe that (1) the donor was intending to or would obtain any advantage or (2) the donee would believe that the donor intended to obtain any advantage." Among the factors that the California Committee directed judges to consider were: the cost of the event in the context of community standards for similar events, whether the benefits conferred were greater in value than traditionally furnished at similar events sponsored by bar associations or similar organizations, whether the benefits are greater than the value of what the judge customarily provides his/her own guests, whether the benefits conferred are usually only exchanged between friends and relatives, whether there is a history or expectation of reciprocal social hospitality, whether the event is a traditional occasion for social hospitality, and whether the benefits received need to be reported. New York opinions have stressed that ordinary social hospitality does not include a party at an expensive restaurant, a cruise or a similar expensive, lavish affair. New York Advisory Opinion 87-15(a).

Based on the facts presented, the Judicial Official may attend the holiday gathering and is not required to report the gift subject to the following conditions:

1. The Judicial Official determines, based upon the factors set forth above in the California and New York opinions, that the holiday gathering constitutes "ordinary social hospitality" within the meaning of Rule 3.13 (b);
  2. The law firm hosting the party is not actively engaged in litigation or proceedings before the Judicial Official;
  3. If the firm hosting the party appears before the Judicial Official in the future, for a reasonable period of time the Judicial Official should recuse himself or herself or may disclose the facts related to attendance at the holiday party and seek remittal of disqualification in accordance with Rule 2.11 (c);
  4. The Judicial Official does not discuss any pending matters with the hosts or guests at the party;
  5. The Judicial Official does not engage in any action that may be perceived as advancing the private interests of the host law firm; and
  6. The Judicial Official does not permit the host firm to announce the Judicial Official's attendance at the holiday party.
- V. The Committee discussed **Informal JE 2015-21**. Pursuant to Rule 2.11(e), a Judicial Official is not automatically disqualified from sitting on a proceeding merely because a lawyer or party to the proceeding has filed a lawsuit against the Judicial Official or filed a complaint with the Judicial Review Council concerning the Judicial Official, however, when the Judicial Official becomes aware of the lawsuit or complaint, the Judicial Official has a duty to disclose, on the record, that fact to the lawyer or parties to the proceeding and then proceed in accordance with Practice Book §1-22 (b). That section requires the Judicial Official, after disclosing the fact of the complaint or lawsuit, to either disqualify himself or herself from sitting on the proceeding, conduct a hearing on the

disqualification issue or refer the matter to another Judicial Official for a hearing and decision.

The question presented by the inquiring Judicial Official is as follows. Once the lawsuit or complaint against a Judicial Official is disposed, is there an ongoing obligation to disclose the prior lawsuit or complaint if the attorney or party involved in the prior proceeding appears before the Judicial Official in a separate matter commenced after the disposition of the lawsuit or complaint, and if so, for how long?

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 2.11(e) states that a judge “is not automatically disqualified from sitting on a proceeding merely because a lawyer or party to the proceeding has filed a lawsuit against the judge or filed a complaint against the judge with the judicial review council. When the judge becomes aware that such a lawsuit or complaint has been filed against him or her, the judge shall, on the record, disclose that fact to the lawyers and parties to the proceeding before such judge and shall thereafter proceed in accordance with Practice Book 1-22 (b).”

At issue in this inquiry is whether a Judicial Official has an ongoing duty to disclose a prior lawsuit or complaint after the matter is resolved. In [JE 2015-01](#), involving a Judicial Official’s obligation to report an attorney to the Statewide Grievance Committee for further investigation, this Committee concluded that once the Judicial Official reports the attorney, the Judicial Official must disqualify him/herself from all cases in which the attorney appears, “both during the pendency of the disciplinary matter, and for a period of two years after the disciplinary matter is fully resolved.” The Committee decided that this standard should apply to the disclosure requirements in this case, as well.

Based upon the facts presented, the Committee determined that the Judicial Official has an ongoing obligation to disclose the prior lawsuit or complaint, both during the pendency of the matter, and for a reasonable period of time, which is not less than two years after the matter is fully resolved. Thereafter, if a motion to disqualify is filed, the Judicial Official should exercise his or her discretion in deciding the motion based upon the information provided in the motion and the accompanying affidavit, as provided for in Connecticut Practice Book § 1-23, as well as the particular circumstances of the case.

- VI. The Committee discussed **Informal JE 2015-22** concerning whether a Judicial Official may serve on the Board of Directors of a Connecticut nonprofit 501(c)(3) institution. The institution consists of four public charter schools in a particular community. The institution's primary goal is to work to close the achievement gap and deliver on the promise of equal educational opportunities for all children, regardless of race, economic status or zip code. The institution's parent organization is comprised of a network of 30 schools in five cities. The board meets approximately 8 times per year, generally in the evenings from 5:00-6:30p.m. There is very little additional work, other than attending the meetings and reading board documents in advance of meetings.

Rule 1.2 of Code 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, or (4) appear to a reasonable person to be coercive.

Rule 3.7 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 (a)(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; (a)(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 ... (a)(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.

This Committee considered two very similar requests in [JE 2012-28](#) and [JE 2014-22](#), which involved service on the boards of non-law related, non-profit, higher education institutions. In both cases, the Committee members unanimously concluded that the Judicial Official may serve on the boards subject to various conditions. Based upon the facts presented, including that the board is part of a public, non-profit, educational institution that is not concerned with the law, the legal system or the administration of justice and that the institution is not frequently involved in litigation in Connecticut courts, the Committee concluded that the Judicial Official may serve on the board and adopted the same 9 conditions imposed in JE 2014-22, which are set forth below:

1. The Judicial Official should regularly reexamine the activities of the board to determine if it is proper to continue his or her relationship with the board. Rule 1.2;
  2. The Judicial Official may not use Judicial Branch resources for activities that concern the board. Rule 3.1(5);
  3. The Judicial Official may not continue to serve on the 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 not engage in a general solicitation of funds on behalf of the organization. Rule 3.7(a)(2). The Judicial Official only may solicit contributions for the organization 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. 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);
  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);
  8. Service on the board may not interfere with the proper performance of judicial duties. Rule 3.1(1); and
  9. The Judicial Official may not solicit students to attend the school, as that is the functional equivalent to soliciting membership in an organization that is not concerned with the law, the legal system or the administration of justice. Rule 3.7(a)(3).
- VII. New Business – The Committee approved the 2016 Regular Meeting Schedule. The next meeting of the Committee is scheduled for January 21, 2016.

VIII. The meeting adjourned at 9:43 a.m.