



Committee on Judicial Ethics

State of Connecticut Judicial Branch
Superior Court Operations
100 Washington Street, 3rd Floor
Hartford, CT 06106

MEMBERS:

Hon. Barry R. Schaller, Chair
Hon. Linda K. Lager, Vice Chair
Hon. Robert J. Devlin, Jr.
Hon. Francis X. Hennessy
Assoc. Prof. Jeffrey A. Meyer

July 16, 2010

Hon. Charles D. Gill
Judge Trial Referee
Litchfield Superior Courthouse
15 West Street
Litchfield, CT 06759

Re: Formal Advisory Opinion JE 2010-21

Dear Judge Gill:

You have requested an opinion from the Committee on Judicial Ethics (hereinafter, "Committee") concerning the propriety of your speaking to a group of Connecticut Department of Public Health employees who are engaged in the licensing, investigation and quality improvement of daycare facilities. You intend to discuss various issues concerning the problems of American children and their role in the courts. You indicated that you would be the only speaker and there will be no charge for those attending the program. Although you do not believe that any of the attendees are individuals who testify in court regarding licensing issues, you indicated that you would recuse yourself if any of them did appear before you. In addition to making general comments about the treatment of children by the courts, you plan to take questions from those in attendance. You have been asked to address specifically the following matters during your talk: (1) your view about children as witnesses; (2) whether that view varies based upon the age of the child or the type of case; (3) the "coping skills" you use when hearing "really sad" cases; (4) how you maintain professional objectivity in the face of heart-rending stories about children being mistreated; and (5) the most challenging case over which you have presided.

The Committee concludes that Canons 2, 3 and 4 of the Code of Judicial Conduct apply to this matter. Canon 2 states that a judge should avoid impropriety and the appearance of impropriety. Subsection (b) of that Canon states, in part, that "[t]he

judge should not lend the prestige of judicial office to advance the private interests of others; nor should the judge convey or permit others to convey the impression that they are in a special position to influence him or her.”

Canon 3 states that the judicial duties of a judge take precedence over all the judge’s other activities. Subdivision (a) (6) of that Canon states that a judge “should abstain from public comment about a pending or impending proceeding in any court ...”

Canon 4 states that a judge may engage in activities to improve the law, the legal system and the administration of justice. It further provides that subject to the proper performance of judicial duties, a judge may engage in specified quasi-judicial duties if in doing so the judge does not cast doubt on his or her impartiality. The permitted quasi-judicial activities include, inter alia, that “A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system and the administration of justice.” The Commentary to Canon 4 states as follows:

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent time permits, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

Canon 4, which is the Canon that primarily governs the proposed activity, permits a judicial official to lecture and participate in activities concerning the law, the legal system and the administration of justice as long as the activity does not cast doubt on the judicial official’s impartiality.

In reaching its decision, the Committee also considered, inter alia, the following principles:

In determining whether conduct casts doubt on impartiality, our Supreme Court has noted the need for the appearance of impartiality, not just actual impartiality.

The standard to be employed is an objective one, not the judge's subjective view as to whether he or she can be fair and impartial in hearing the case. In Connecticut, the disqualification of judges is governed by General Statutes 51-39 and Canon 3(C) of the Code of Judicial Conduct. Under Canon 3 (C)(1) of the Code of Judicial Conduct “[a] judge should disqualify himself [or herself] in a proceeding in which his [or her] impartiality might reasonably be questioned”

"Any conduct that would lead a reasonable [person] knowing all the circumstances to the conclusion that the judge's 'impartiality might

reasonably be questioned' is a basis for the judge's disqualification. Thus, an impropriety or the appearance of impropriety that would reasonably lead one to question the judge's impartiality in a given proceeding clearly falls within the scope of the general standard" Thode, Reporter's Notes to Code of Judicial Conduct (1973), pp. 60-61. "The question is not whether the judge is impartial in fact. It is simply whether another, not knowing whether or not the judge is actually impartial, might reasonably question his [or her] impartiality, on the basis of all of the circumstances." *Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978); see *Spires v. Hearst Corporation*, 420 F. Sup. 304, 307 (D. Cal. 1976). (Footnote omitted.)

Papa v. New Haven Federation of Teachers, 186 Conn. 725, 744-46 (1982).

Furthermore, while statements that explain the basis for a court's ruling, without more, do not establish bias (see *Mercer v. Cosley*, 110 Conn. App. 283, 292-93 (2008)) and a judicial official's personal opinions about a legal or social matter are not, without more, disqualifying (see *State v. Montini*, 52 Conn. App. 682, 693-96, cert. denied, 249 Conn. 907 (1999)), statements reflecting preconceived notions of credibility of a party or counsel require disqualification. See *Cameron v. Cameron*, 187 Conn. 163, 170 (1982). Similarly, expressions of bias for or against a party's specific claims and public statements that indicate prejudgment of an issue also require disqualification. See *Papa*, supra, at 743-53 (1982).

The Committee also took into account its Informal Opinions 2008-14, 2008-23, 2008-34, and 2010-11, all of which involved Judicial Officials proposing to engage in educational activities.

With the foregoing principles in mind and consistent with Canons 2, 3, and 4 of the existing Code of Judicial Conduct (hereinafter, "CJC") and Rule 3.1 of the Code of Judicial Conduct which takes effect on January 1, 2011 (hereinafter, "New CJC"), the Committee unanimously agreed that it would not be improper for you to speak to the Department of Public Health employees subject to your complying with the following conditions:

- (1) you should not comment on a pending or impending matter or make any statement that might reasonably be expected to impair the fairness of a pending or impending matter (see also CJC Canon 3(a)(6) and New CJC Rule 2.10(A));
- (2) your participation should not be such as to lead a reasonable person to question your capacity to decide impartially any issue under discussion that may come before you (see also CJC Canon 4 and New CJC Rule 2.10(A)), and specifically:
 - (A) you should not suggest that you would adopt a particular interpretation of disputed legal issues,

- (B) you should not make statements that indicate a predisposition regarding any particular case, issue or witness that may come before you, and
 - (C) you should ensure that your participation will not interfere with the proper performance of your judicial duties or create grounds for disqualification;
- (3) you should not offer legal or other advice to Department of Public Health employees as to how they should handle specific matters and you should exercise caution in answering any questions that seek to elicit such advice (see also CJC Canon 5(f) and New CJC Rule 3.10);
- (4) in the event that you choose to comment on your “most challenging” case, any such commenting is subject to the following restrictions:
- (A) if the case involves a confidential juvenile matter, it would not be proper to reveal information that would lead to the identity of the juvenile involved (see also CJC Canon 2(a) and New CJC Rule 1.1 and 1.2);
 - (B) if the case is now an erased matter, it would not be proper to discuss any specific information that is attributable to it (see also CJC Canon 2(a) and New CJC Rule 1.1);
 - (C) disclosure of any confidential information acquired in your judicial capacity would not be proper (see also CJC Canon 2 and New CJC Rule 3.5); and
 - (D) it would not be proper to state personal views that may go beyond what was specifically stated in oral or written rulings or on the record of the particular case (see also CJC Canon 2 and New CJC Rule Canons 1 and 2);
- (5) you must be willing and available to participate in appropriate educational activities for other groups, if requested and available, including but not limited to daycare licensees and those who represent them (see also CJC Canon 2 and New CJC Canons 1 and 2); and
- (6) you should retain the right to review and pre-approve the use of any biographical information or other material used to describe your participation in the program and to review any post-presentation publications (see also CJC Canon 2(b) and New CJC Rules 1.3 and 2.4(C)).

The opinions of the Committee on Judicial Ethics are advisory in nature. Judicial conduct that is consistent with an advisory opinion issued by the Committee may be evidence of good faith on the judge’s behalf, but our opinions are not binding on the Judicial Review Council, the Superior Court, the Appellate Court or the Supreme Court in the exercise of their judicial discipline responsibilities. You may submit a written request for reconsideration, explaining the basis for the request, to the Secretary to the Committee within thirty days after distribution of this opinion. Policy & Rules of the Committee, §10.

Sincerely,

Barry R. Schaller, Chair
Committee on Judicial Ethics