



Connecticut Committee on Judicial Ethics

Informal Opinion Summaries

2017-02 (Emergency Staff Opinion Issued May 26, 2017)

Transition to the Bench; Notifying Former Clients; Rules 1.2 & 1.3; Rules of Professional Conduct Rule 1.16

Issue & Facts: A Judicial nominee is a member of a small law firm. Clients, pursuant to the retainer agreement, are clients of the firm and not of the Judicial nominee, although the Judicial nominee may have been the only attorney to have met with some of the clients and has a personal relationship with the clients. If confirmed, the nominee has inquired about the propriety of sending letters to clients advising them of his or her appointment to the bench and that they will continue to be represented by the nominee's (then Judge's) former law firm. In addition, the nominee has inquired if he or she can review files and leave notes regarding the status of the case for successor counsel.

Relevant Code & Rule Provisions: 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 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 allow others to do so."

Rule 1.16 (d) of the Rules of Professional Conduct states "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of the fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law. If the representation of the client is terminated either by the lawyer withdrawing from representation or by the client discharging the lawyer,

the lawyer shall confirm the termination in writing to the client before or within a reasonable time after the termination of the representation.”

Response: This inquiry was circulated to the Committee members and their input was solicited and received. In Cynthia Gray’s paper, *Ethical Issues for New Judges* (rev. 2003), she notes at page 7 the following:

The ethical responsibilities owed to a client when an attorney leaves the practice of law to become a judge are no different than those owed when an attorney ends representation of a client for any other reason and are covered by each state’s rules of professional responsibility. Thus, a new judge should consult her state’s rules and law on the issue. *See also ABA/BNA Lawyers Manual on Professional Conduct*, 91:801, ‘Duties at End of Representation.’ Rule 1.16(d) of the ABA Model Rules of Professional Conduct requires a lawyer when ending representation to “take steps to the extent reasonably practicable to protect a client’s interests.’ Specific steps a new judge should take include:

- Promptly contacting all clients regarding the change in professional status to give reasonable notice and allow time for employment of other counsel;
- Discussing with the client options available for obtaining other counsel if the matter cannot be concluded prior to the attorney becoming a judge; and
- Assisting the client in locating counsel with the necessary expertise.

The paper further notes that various jurisdictions have stated that a judge could provide information but not advice on trial strategy to successor counsel, and the advisory committee for federal judges has allowed a judge to respond to questions from successor counsel as to historical facts not readily apparent from the file, the factual details within the judge’s peculiar knowledge, and similar matters of clarification.

Based upon the foregoing, the Judicial nominee was advised that he or she (1) can provide a letter to clients that as a result of his or her appointment to the bench, he or she will no longer be representing the client, but that the law firm will continue to represent the client, and (2) the Judicial Official can respond to questions from successor counsel and provide information, but not legal advice (including but not limited to trial strategy), concerning historical facts not readily apparent from the file, factual details that are within the Judicial Official’s peculiar knowledge and similar matters of clarification.