



Connecticut Committee on Judicial Ethics

Informal Opinion Summaries

2017-08 (July 20, 2017)

Extrajudicial Activities; Political Activity/Organizations

Rules 1.2, 2.1, 2.4, 3.1, 3.7 & 4.1

Issue: Must a Judicial Official 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?

Relevant Code 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 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.

Response: 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.

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