



Connecticut Committee on Judicial Ethics

Informal Opinion Summaries

2018-11 (July 19, 2018)

Extrajudicial Activities; Rules 1.2, 1.3, 2.10, 2.11, 3.1, 3.7 & 3.10

Issue: May a Judicial Official provide training in collaborative divorce? The training is provided through the Connecticut Council for Non-Adversarial Divorce (CCND) and is provided by attorneys, mental health and financial professionals. The Judicial Official and colleagues (psychologist and financial professionals) developed the training for CCND and have been providing the annual training for several years. The Judicial Official is paid by CCND and all advertising for the program is done by CCND to members of its organization. The Judicial Official does not plan to be a provider, but wants to transition his/her role to another attorney who can take it over. The Judicial Official was asked to train the attorney and perhaps play some role in the training scheduled for later this year.

Additional Facts: The Connecticut Council for Non-Adversarial Divorce (CCND) is the statewide non-profit professional organization of Connecticut mediators and collaborative divorce practitioners. The CCND's mission is to change the way people divorce or separate in Connecticut by reducing conflict and improving the lives of family members – especially children.

Relevant Code Provisions: 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 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 2.10 (a) of the Code provides that "[a] judge shall not make any public statement that might reasonably be expected to affect the outcome or to impair the fairness of a matter pending or impending in any court or make any nonpublic statement that might substantially interfere with a fair trial or hearing." Rule 2.10 (d) recognizes certain exceptions to this prohibition, including an exception for a judge's public statement to "explain court procedures."

Rule 2.11 of the Code requires disqualification "in any proceeding in which the judge's impartiality might reasonably be questioned" due to personal bias or prejudice.

Rule 3.1 states that a judge may engage in extrajudicial activities, except as prohibited by law, however, a judge shall not participate in activities that (1) will 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 or resources except for incidental use or for activities that concern the law, the legal system or the administration of justice, or if the use is permitted by law. The rule's commentary encourages judges to participate in appropriate extrajudicial activities and observes that "[j]udges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law." Rule 3.1, cmt. (1).

Rule 3.7(a)(4) states that "[s]ubject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations ... 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 "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,..."

Rule 3.10 contains the Code's prohibition against the practice of law.

Response: The issue of whether a judge may participate in law-related educational activities has previously been considered by this Committee:

- In [JE 2008-14](#), this Committee determined that a Judicial Official may participate in a law-related educational program where questions may be asked by the audience, subject to certain conditions, and agreed that the Judicial Official should retain the right to review and pre-approve the use of any biographical information.
- In [JE 2008-25](#), this Committee unanimously approved a Judicial Official's participation on a "Law Talk" segment of a local radio station program devoted to the Judicial Branch's foreclosure mediation program, subject to certain conditions.
- In [JE 2009-24](#), this Committee determined that a Judicial Official is not ethically restricted from teaching a course about legislative process at a state university, but set forth several conditions.
- In [Formal Opinion JE 2010-21](#), this Committee advised Judge Trial Referee Gill that he could speak to a group of Department of Public Health employees who are engaged in the licensing, investigation and quality improvement of daycare facilities subject to, inter alia, the follow conditions:

(1) The Judicial Official 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;

- (2) The Judicial Official's participation should not be such as to lead a reasonable person to question his capacity to decide impartially any issue under discussion that may come before him, and specifically (a) he should not suggest that he would adopt a particular interpretation of disputed legal issues, (b) he should not make statements that indicate a predisposition regarding a particular case, issue or witness that may come before him, and (c) he should ensure that his participation will not interfere with the proper performance of his judicial duties or create grounds for disqualification;
 - (3) He should not offer legal or other advice to employees as to how they should handle specific matters; and
 - (4) He should retain the right to review and pre-approve the use of any biographical information or other material used to describe his participation in the program and to review and post-presentation publications.
- This Committee determined in [JE 2013-39](#) that a Judicial Official is not ethically restricted from speaking to a class of law school students about the legislative and state budget process, alone or on a panel with current or former legislators (some of whom may be lawyers), subject to the following conditions:
 - (1) The Judicial Official's participation does not interfere with the proper performance of the Judicial Official's duties nor create grounds upon which the Judicial Official may have to recuse him/herself;
 - (2) The Judicial Official does not give opinions that would cast doubt on the Judicial Official's impartiality or indicate that the Judicial Official has a predisposition with respect to a particular case; and
 - (3) The Judicial Official should refrain from any inappropriate comment (as indicated above) about pending or impending matters.
 - In [JE 2013-42](#), this Committee concluded that a JO may serve as a panelist speaker at a foreclosure seminar hosted by the Connecticut Mortgage Bankers Association, with conditions.
 - This Committee determined, in [JE 2013-43](#), that a JO may speak on a panel at a non-profit trade media organization's annual meeting and share comments relating to the topic of "Media & the Law," subject to several conditions.

Based on the facts presented, the Committee determined that the Judicial Official may provide training in collaborative divorce through the Connecticut Council for Non-Adversarial Divorce, subject to the following conditions:

- (1) The Judicial Official's participation does not interfere with the proper performance of the Judicial Official's duties nor create grounds upon which the Judicial Official may have to recuse him/herself. Rule 3.1.
- (2) The Judicial Official does not give opinions that would cast doubt on the Judicial Official's impartiality or indicate that the Judicial Official has a predisposition with respect to a particular case. Rules 3.1(3) & 2.11(a).
- (3) The Judicial Official should refrain from any inappropriate comment (as indicated above) about pending or impending matters. Rule 2.10(a).
- (4) The Judicial Official should not offer legal advice as to how specific matters should be handled and should exercise caution in answering questions that seek to elicit such advice. Rule 3.10.
- (5) The Judicial Official should retain the right to review and pre-approve the use of any biographical information or other material used to describe his or her participation in the program. Rule 1.3.

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