



## Connecticut Committee on Judicial Ethics

### Informal Opinion Summaries

**2018-13 (July 19, 2018)**

**Business Activities; Fiduciary Positions; Appearance of Impropriety;  
Rules 1.2, 1.3, 3.1, 3.8 & 3.11**

**Issue:** May a Judicial Official who holds a real estate broker's license continue to receive referral fees consistent with the real estate industry if he connects buyers and sellers of real estate?

**Facts:** The Judicial Official has indicated that his/her business is strictly word of mouth with no advertising. If the Judicial Official knows people (friends, associates, business contacts from prior to appointment to the bench, etc.) who are looking to buy or sell property and he/she knows someone who may be interested, he/she will advise the buyer's or seller's realtor of the possible interested party. Prior to the Judicial Official's appointment, if such a referral was made and the sale consummated, the Judicial Official as a real estate broker would receive a portion of the real estate commission consistent with the real estate industry practice.

In Connecticut, real estate brokers are licensed and regulated by the Department of Consumer Protection. Licensure is by examination with certain educational and experiential prerequisites. See General Statutes § 20-314. The duties of a real estate broker are defined by statute to include, among other things, "any person...which acts for another person or entity and for a fee, commission or other valuable consideration, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of, an estate or interest in real estate...." General Statutes § 20-311(1).

**Relevant Code Provisions:** Rule 1.2 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 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 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 3.8 states in relevant part that a judge "shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties."

Rule 3.11 limits the circumstances under which a judge may serve as an officer, director, manager, general partner or advisor to a business entity, to a business closely held by the judge or members of the judge’s family or a business entity primarily engaged in investments of the financial resources of the judge or members of the judge’s family. A judge is further prohibited from engaging in the foregoing otherwise permissible activities if it will interfere with the proper performance of judicial duties, lead to frequent disqualifications, involve the judge in frequent transactions with lawyers or others likely to come before the court on which the judge serves, or result in a violation of other provisions of the Code.

**Response:**

The Committee has not previously considered whether a Judicial Official can engage in business as a real estate broker. There are, however, a number of opinions from other jurisdictions addressing this or similar topics, with the weight of authority concluding that a judge should not actively participate in the real estate business either as a broker, see New York Opinion 05-130(A); Florida Opinion 90-11; Georgia Opinion 11; or as an agent/salesperson, see Ohio Opinion 2006-1; Delaware Opinion 2005-1; Arizona Opinion 94-05; Alabama Opinion 78-34.

Although some of the foregoing opinions are based upon rules that are more restrictive than Connecticut's Rule 3.11 regarding a judge's participation in business activities; see e.g., Delaware Opinion 2005-1 (relying, in part, on Delaware rule that prohibits a judge from being employed by a business that is not closely held by the

judge or his/her family); the Committee nevertheless concluded that the proposed activity is inconsistent with the Code for at least two reasons.

First, a real estate broker is a fiduciary to his/her client under Connecticut law. See *New England Retail Properties, Inc. v. Maturo*, 102 Conn. App. 476, 486-87, cert. denied, 284 Conn. 912 (2007). Therefore, a Judicial Official acting as a real estate broker generally would run afoul of Rule 3.8, which prohibits a judge from serving in a fiduciary position "except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties." See Ohio Opinion 2006-1; Delaware Opinion 2005-1.

Moreover, it may be difficult for a Judicial Official moonlighting as a real estate broker to escape the appearance that he/she is exploiting his or her office for personal gain or the gain of others, in violation of Rules 1.2 and 1.3. Given that the Judicial Official's business is conducted by word of mouth involving people known to him or her, it seems likely that many, if not most, existing and prospective clients will be aware of the Judicial Official's position. As such, there is a risk that the Judicial Official's position and status may unintentionally influence the transaction and/or the decision of whether to utilize the Judicial Official's services as a real estate broker. Therefore, the Committee concluded that the Judicial Official may not continue to receive fees for referrals made in his/her capacity as a real estate broker.

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