



Connecticut Committee on Judicial Ethics

Informal Opinion Summaries

2022-04 (May 19, 2022)

**Extrajudicial Activities; Writing; Public Statements; Off the Bench Conduct
Rules 1.2, 2.10, 2.11, 3.1, Comment (1) to Rule 3.1, & 4.1**

Issue: May a Judicial Official (“JO”) write an occasional column for an online newspaper to educate the public on the ways the legal system works, how judges make decisions, and the law generally?

Facts: The inquiring JO has been offered the opportunity to write an occasional column for a nonprofit, non-partisan, and digital only newspaper. The JO would not be paid. The column would run on an irregular basis initially. The goal of the column would be purely and simply educational and would be strictly apolitical, non-partisan, and uncontroversial. The JO would not discuss individual cases or the JO’s opinion on decisions and would not offer legal advice. The JO would not engage in any dealings with readers, nor would the JO reply to letters or inquiries. The JO confirmed with the publisher that the online newspaper does not have a comment option at the end of stories and columns. No fundraising or promotions would be allowed.

The JO provided a few examples of the topics he/she might write about:

1. How judges make decisions;
2. The role of the courts in a free society;
3. The importance of judicial independence;
4. The essential role of the United States Constitution and/or the Connecticut Constitution;
5. The complexity of interpreting Constitutional provisions and/or statutes;
6. What is meant by the term "legal technicality;"
7. Why is procedural fairness so important;
8. What were Lincoln's justifications for suspending the writ of habeas corpus during the Civil War;
9. How the United State Constitution is amended; and
10. Where do the courts fit into our tripartite governmental structure.

The JO’s goal would be to target the columns to people who are not particularly sophisticated or knowledgeable about legal issues. On occasion, the JO would fold in his/her fascination with history, as well as principles of advocacy. The objective, always, would be to fulfill a judge's duty to educate the public about the workings of the law, which is obscure to so many people.

Relevant Code Provisions: Rules 1.2, 2.10, 2.11, 3.1, Comment (1) to Rule 3.1 & 4.1

Rule 1.2 of the Code of Judicial Conduct (Promoting Confidence in the Judiciary) 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 2.10 (Judicial Statements on Pending and Impending Cases) prohibits judges from making 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 non-public statement that might substantially interfere with a fair trial or hearing.”

Rule 2.11 (a) (Disqualification) requires disqualification of a judge in “any proceeding in which the judge’s impartiality might reasonably be questioned including, but not limited to, the following circumstances... (4) The judge has made a public statement, other than in a court proceeding, judicial decision, or opinion that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.”

Rule 3.1 (Extrajudicial Activities in General) provides that “[a] judge may engage in extrajudicial activities except as prohibited by law” and that “[a] judge shall not: ... (3) participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.”

Comment (1) to Rule 3.1 states 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.”

Rule 4.1 (Political Activities in General) states: “(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.”

Discussion: This Committee has previously considered the propriety of writing for a newspaper. In [JE 2012-32](#), a Judicial Official asked whether s/he could submit an op-ed article concerning the importance of voting in the upcoming elections.

The Committee concluded preliminarily that it is permissible for a JO to write an op-ed article for publication on the importance of voting, subject to five conditions:

- 1) The Judicial Official does not give opinions that would cast doubt on the Judicial Official’s impartiality. Rule 3.1(3).
- 2) The Judicial Official’s written statements are factual and instructive about the subject matter but do not include comments about any pending or impending matters. Rule 2.10.
- 3) The Judicial Official is careful not to express opinions in a way that would indicate that the Judicial Official has a predisposition with respect to particular cases. Rule 2.11(a).
- 4) The Judicial Official does not comment on political issues in the article or otherwise engage in prohibited political activity under Rule 4.1.
- 5) The Judicial Official does not publish the op-ed article in a partisan publication.

However, the Committee further concluded that the proposed op-ed article should not be submitted for publication because it contained statements that (1) discuss specific election races and candidates, (2) suggest the Judicial Official's political priorities and views, and (3) draw attention to certain political issues/controversies important to the Judicial Official (such as taxes, homeland security, environmental quality standards, FDA standards, Voter ID laws and the Affordable Healthcare Act) which would be in violation of Rule 3.1(3) and Canon 4's proscriptions against engaging in extrajudicial, political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

Recommendation:

Based on the information submitted, including that (1) the purpose of the column is to educate the public on the law, the legal system, and the administration of justice, (2) the content will be apolitical and uncontroversial, and (3) the paper is not-for-profit and non-partisan, the Committee determined that the Judicial Official may write the column subject to the following conditions:

- 1) The Judicial Official does not give opinions that would cast doubt on the Judicial Official's impartiality. Rules 1.2 & 3.1(3).
- 2) The Judicial Official's written statements are factual and instructive about the subject matter but do not include comments about any pending or impending matters. Rule 2.10.
- 3) The Judicial Official is careful not to express opinions in a way that would indicate that the Judicial Official has a predisposition with respect to particular cases. Rule 2.11(a).
- 4) The Judicial Official does not comment on political issues in the article or otherwise engage in prohibited political activity under Rule 4.1.
- 5) The Judicial Official does not publish the articles in a partisan publication.
- 6) The Judicial Official should regularly reexamine the activities of the publication to determine if it is proper to continue his or her relationship with the publication. Rule 1.2.