



## Connecticut Committee on Judicial Ethics

### Informal Opinion Summaries

**2023-01 (February 27, 2023)**

**Extrajudicial Activities; Event, attendance/appearance; Public Statements; Name, Use of; Video Presentations; Canon 1 and Rules 1.2, 1.3, 2.10, 2.11, 3.1 & 3.7**

**Issue:** May a Judicial Official prepare a video testimonial for an award recipient to be shown at the Connecticut Bar Association’s “Celebrate with the Stars” annual event?

**Facts:** A former elected Executive Branch government official has been selected to receive the Connecticut Bar Association (“CBA”) *2023 Distinguished Public Service Award* which will be presented at this year’s “Celebrate with the Stars” annual awards celebration on May 3, 2023 at the Aqua Turf Club. According to the [CBA website](#), this year’s list of awardees include six attorneys, three judges, two law school professors, and a former government official.

The CBA letter to the government official (the “award recipient”) states:

This award is given to a person with a meaningful relationship to Connecticut who has distinguished themselves in his or her profession and has made a significant contribution to society in addition to, or outside, of their area of endeavor.... Award recipients will be given the opportunity for a one minute acceptance speech. In addition to your speech, a video will be shown to allow audience members to get a better sense of the significance of the award as well as who you are and your dedication to your work. You will also be recognized in *CT Lawyer* magazine as well as the event program. To assist us in all of our communications, we ask that you provide us with the contact information of two persons (colleagues, friends, family, etc.) for testimonials for your video as well as a recent bio, headshot, and any other information you think we may find helpful.... Additionally, your family, friends, and colleagues may contact the CBA if they wish to purchase an advertisement in the program to honor your achievement....”

The award recipient has asked the Judicial Official to provide a video testimonial to be shown at the CBA event. (The other person the award recipient has invited to record a testimonial is the Attorney General.) The Judicial Official and the award recipient are personal friends and have worked together in the past. The award recipient does not currently hold public office and does not practice law in the State of Connecticut. Before agreeing to record the testimonial, the Judicial Official wants to make sure it is ethically permissible to do so.

According to CBA staff, the recorded video will be previewed by the videographer, CBA staff and CBA officers during its pre-event run through/practice. The video will then be played at the

event on May 3rd and later posted on the CBA's *YouTube* channel. The CBA representative indicated that if posting on their *YouTube* channel is a concern/issue, the CBA does not have to post the Judicial Official's video.

The inquiring Judicial Official sees this request as potentially distinguishable from the "Blue Book dedication" informal opinion ([JE 2022-05](#)) in that (1) the award is from the CBA, a non-partisan organization that includes judges; (2) the award is from a legal organization, and judges are integral to the justice system; (3) as a government official, the award recipient partnered with the CBA on non-partisan projects including civics education, Law Day and neutral Election Day observers. It is the award recipient's understanding that the award stems from their career long work in civics education and engagement. To that end, the Judicial Official indicated they would focus their remarks on the award recipient "as a person, a colleague on advocate for civics education and involvement rather than on legislative achievements." The Judicial Official cannot guarantee, however, that such achievements will not be mentioned by other speakers.

**Relevant Code Provisions:** Canon 1 and Rules 1.2, 1.3, 2.10, 2.11, 3.1 & 3.7

Canon 1. A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

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 1.3 (Avoiding Abuse of the Prestige of Judicial Office) states that "[a] judge shall not 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 (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 (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 “[t]o the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges 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 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities) states that “(a) [s]ubject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice... including, but not limited to, the following activities: ... (4) 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, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice.”

### **Discussion:**

In [JE 2022-05](#), this Committee considered the ethical propriety of writing a public dedication/foreword in the State Register and Manual (the “Blue Book”). The Committee was concerned (1) that the proposed content of the dedication, which would necessarily mention party and accomplishments, such as Election Day registration and no excuse absentee ballots, could be interpreted by the reader as political in nature, (2) that the dedication could also appear as though the Judicial Official had a personal bias in favor of the Office of the Secretary of the State, and (3) that the foreword could potentially be used as a political endorsement if the Secretary ever wanted to run for public office in the future. As a result, the Committee unanimously concluded that the Judicial Official should not write the foreword/dedication in the Blue Book because it will likely contain statements that (1) will mention accomplishments and issues, such as Election Day registration and no excuse absentee ballots, that have become largely partisan, (2) may appear as though the Judicial Official has a personal bias in favor of the Office of the Secretary of the State, and (3) may suggest the Judicial Official’s political priorities and views, in violation of Rules 2.11(a), 3.1(3) and 4.1.

The Committee agrees that the current inquiry can be viewed as potentially distinguishable from the “Blue Book dedication” informal opinion. In the instant case, the video testimonial is being presented to a distinct group of bar association members at an awards dinner, not to the general public; the Connecticut Bar Association is a non-partisan nonprofit member service organization dedicated to advancing the legal profession and the principles of law and justice; and the Judicial Official’s video remarks will focus on the award recipient’s qualities as a person and as an advocate for non-partisan civics education and engagement, rather than on legislative achievements.

The [CBA website](#) indicates that the event is funded through four different levels of [sponsorships](#) (i.e., Supporter, Silver, Gold and Platinum) and through the sale of advertisements in the program book. Therefore, whether the Judicial Official may participate as a video presenter depends on whether the event qualifies under Rule 3.7 as one that is “concerned with the law, the legal system, or the administration of justice.” In [JE 2011- 05](#), the Committee adopted the

position articulated in ethics opinions from other jurisdictions that in order for an activity to qualify as one that concerns “the law, the legal system, or the administration of justice,” it must be shown that there is “a direct nexus between [the activity] and how the court system meets its statutory and constitutional responsibilities – in other words, how the courts go about their business.” Applying the “direct nexus” standard to the facts presented, the Committee concludes that the awards dinner qualifies as a law-related activity because the event is designed to improve the legal system by recognizing noteworthy legal professionals, jurists, and public servants.

### *Opinions from Other Jurisdictions*

The New York Committee on Judicial Ethics allows judges to introduce and present awards to honorees at fund-raising events, subject to certain conditions:

[New York 04-141](#) (A judge may introduce and present an award to an honoree at a not-for-profit organization’s fund-raising dinner, provided that the judge’s presence and role as the presenter of the award are unadvertised.)

[New York 11-107](#) (As long as a judge’s presence and role as presenter of an award are unadvertised prior to an event, the judge may introduce and present an award to an honoree at a not-for-profit organization’s fund-raising dinner and may also permit his/her name, title, and biography to be included in materials distributed at the event. Although the judge’s role as an awards presenter must be unadvertised *prior to the event* in order to avoid any appearance that the prestige of judicial office is being used to further the organization’s fund-raising efforts..., no such concerns are raised if the judge is listed as an award presenter in materials that are handed out *at the event*.)

[New York 98-50](#) (A judge may present a special recognition award or be an honoree at the annual fund-raising dinner of a specialized association of lawyers and judges, but may not participate in the solicitation of funds or other fund-raising activities.)

California Judicial Ethics Committee’s [Formal Ethics Opinion No. 72](#) offers guidance to judges on the topic of judicial participation in video presentations and discusses the application of the rules to various situations. Participation in video presentations is permitted, but “the judge must take into consideration the purpose of the video and avoid the pitfalls of the video being used for fundraising, and/or promoting the interests of others; makes sure that he is not discussing pending or impending cases; that he is not making a statement which commits the judge with respect to controversies or issues that are likely to come before the court; makes sure that his comments do not cast reasonable doubt on his capacity to act impartially, or demean the judicial office[;] and that he is promoting the integrity and independence of the judiciary.” (Id., p. 7.)

Below are a few examples contained in [California Formal Opinion No. 72](#):

*1. Judge has long history, prior to and after appointment to the bench, with an organization. This organization has decided to honor the judge for her many years of contribution to the community and to the organization. They ask the judge to participate in a video discussing the judge’s history with the organization and community. No solicitations for funds will be made as part of the video but the video will be played at a ceremony honoring the judge which is also a fundraiser.*

May the judge participate? Yes, since the video is used as a means of honoring the judge it is not using the office or title to advance the personal interests of either the judge or the organization and since there is no solicitation for funds by the judge this would be permitted under Canon 4C3(d)(iv). This would be no different than the judge simply attending the event and receiving the award. (Id., p. 4.)

*8. The Public Defender's Office is preparing a video honoring the history of the office. They ask [the] judge, who was a deputy public defender prior to the bench, to participate in the video by describing his career with the Public Defender. The video will be shown at a function involving the legal community.*

May the judge participate? Yes. As long as the judge does not cast doubt on his impartiality and does not discuss any pending or impending cases, he may participate. (Id., p. 6.)

*14. The judge will be honored by a Youth Mentoring Program. The program has requested that she participate in a video biography to be played at the dinner/fundraiser being held in her honor. The program has not decided whether the video will be played[?] linked to their web site fundraising efforts and if it is the video may be edited in the future.*

May the judge participate? No. Since the program may in the future use the video specifically for the purpose of fundraising, even though there are no current plans to do so, places this judge in a situation in which the judge may be in violation of the Canons in the future and the judge has a duty to avoid that possibility. (Id., p. 7.)

#### **Recommendation:**

Based on the information submitted, including that the video remarks will focus on the award recipient's qualities as a person and as an advocate for non-partisan civics education and engagement, rather than on legislative achievements, the Committee concludes that it is permissible pursuant to Rule 3.7(a)(4) for the Judicial Official to provide the video testimonial at the CBA fund-raising event, subject to the following conditions:

- (1) The Judicial Official does not participate in fund-raising except as permitted in Rule 3.7(a)(2);
- (2) The Judicial Official's presence and role in the video presentation are unadvertised prior to the event. However, the Judicial Official's name, title, and biography may be included in materials distributed at the event; and
- (3) The Judicial Official's video testimonial should not be made publicly available on the CBA's *YouTube* channel (or any other online media) after the event.