

Committee on Judicial Ethics
Teleconference
Tuesday, January 22, 2013

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Edward R. Karazin, Jr., Vice Chair, Professor Jeffrey A. Meyer, Judge Maureen D. Dennis, and Judge Christine E. Keller. Staff present: Attorney Martin R. Libbin, Secretary.

MINUTES

- I. With the above noted Committee members present, Justice Schaller called the meeting to order at 1:34 p.m. Although publicly noticed, no members of the public were in attendance.
- II. The Committee members present unanimously approved the Minutes of the December 12, 2012 meeting.
- III. The Committee discussed Informal JE 2013-01 concerning whether a Judicial Official may serve on the board of directors of an out-of-state homeowners' association with respect to property that the Judicial Official owns in that other state.

The Judicial Official has been asked by the nominating committee of the homeowners' association to serve on its board of directors. As a result of various issues, the current board of directors passed a significant special assessment against each property owner in order to address certain defects that are impacting property values. Some of the members of the homeowners' association are opposed to the plans for addressing the problems and the special assessment.

Rule 1.2 of the Code of Judicial Conduct requires a judge to act in a manner that promotes public confidence in the impartiality of the judiciary and to avoid impropriety as well as the appearance of impropriety. Rule 2.10(a) prohibits a judge 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. 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 deals specifically with participation in educational, religious, charitable, fraternal and civic organizations and activities. It provides, subject to the general requirements of Rule 3.1, that a judge may participate in activities sponsored by or on behalf of civic organizations not conducted for profit including, but not limited to, “(a)(1) participating in the management and investment of the organization’s or entity’s funds; ... (a)(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.”

This Committee previously addressed the issue of serving on the board of a non-law related nonprofit organization in opinions JE 2012-06 (Judicial Official may accept appointment to serve on a nonprofit, non-law related, education-related accreditation board with conditions); JE 2012-28 (Judicial Official may accept appointment to serve on a community advisory board of a nonprofit, non-law related division within a higher education institution with conditions); and JE 2012-33 (Judicial Official may not serve as a member of a community advisory board for a hospital consortium that is frequently engaged in adversary proceedings in the court of which the Judicial Official is a member).

After considering several opinions from New York, which held that a judge who is a homeowner may serve as a member, officer or non-legal advisor of a homeowners’ association or residential cooperative, with certain conditions, and Florida, which held that a judge must resign from the board of a homeowners’ association which is being sued by a homeowner in the court of which the judge was a member, on the facts presented, including that any potential litigation will occur outside of Connecticut, the Committee unanimously agreed that the Judicial Official may serve on the board of directors of the out-of-state homeowners’ association, including assisting the organization in planning related to fund-raising and participating in managing and investing its funds (Rule 3.7(a)(1)), subject to the following conditions:

1. The Judicial Official should regularly reexamine the activities of the Board to determine if it is proper to continue his or her relationship with the Board. Rule 1.2.
2. The Judicial Official should 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 non-public statement that might substantially interfere with a fair trial or hearing. Rule 2.10(a).

3. The Judicial Official should not use Judicial Branch resources for activities that concern the Board (except for incidental use). Rule 3.1(5).
 4. The Judicial Official should not provide legal advice or otherwise engage in the practice of law. Rule 3.10.
- IV. The meeting adjourned at 1:48 p.m.