

Committee on Judicial Ethics
Teleconference
Thursday, February 19, 2015

Members present via teleconference: Judge Christine E. Keller, Chair, Judge Maureen Dennis, Vice Chair, Judge Barbara M. Quinn, Professor Sarah F. Russell, and Judge Angela C. Robinson. Staff present: Attorney Martin R. Libbin, Secretary and Attorney Viviana L. Livesay, Assistant Secretary.

MINUTES

- I. With the above noted Committee members present, Judge Keller called the meeting to order at 9:32 a.m. Although publicly noticed, no members of the public were in attendance.
- II. The Committee tabled approval of the January 15, 2015 meeting minutes until the next meeting.
- III. The Committee ratified **Emergency Staff Opinion JE 2015-02** concerning whether a Judicial Official may speak at a dinner in honor of a recently retired politician. The proceeds from the dinner will be given to an educational institution. According to the invitation, the dinner is being co-sponsored by the honoree's political party and the honoree's family.

Rule 1.2 states that a judge "should act at all times in a manner that promotes public confidence in the ... 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 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 the use is permitted by law.

Rule 3.7 states that a Judicial Official may participate in activities sponsored by organizations or governmental entities 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 but not limited to the following activities: ... “(4) appearing or speaking at ...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.” Comment (3) to said Rule states that mere attendance at an event, “whether or not the event serves a fund-raising purpose, does not constitute a violation of subsection (a) (4).”

Rule 4.1(a) states, in relevant part, as follows:

Except as permitted by law, or by Rules 4.2 and 4.3, a judge shall not:

...

(5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office ...

The Commentary to Rule 4.1 states, in relevant part, as follows:

(2) Public confidence in the independence and impartiality of the judiciary is eroded if judges are perceived to be subject to political influence. Although judges may register to vote as members of a political party, they are prohibited by subsection (a) (1) from assuming leadership roles in political organizations.

This inquiry was circulated to the Committee members and their input solicited. In [JE 2012-21](#), at issue was whether a Judicial Official and his or her spouse could attend a small gathering at the home of a relative so that a retiring political official could thank the hosts and guests (other than the Judicial Official) for their prior support. No fee was charged and no fundraising took place. The political official did not have and was not likely to be engaged in any proceedings that ordinarily would come before the Judicial Official, the court of which the Judicial Official was a member or any court subject to the appellate jurisdiction, if any, of the court on which the Judicial Official served. This Committee determined that Rule 4.1 prescribed guidelines limiting the involvement of judges with political activities. The Committee unanimously determined that attendance at the event would not violate Rule 4.1 because the event was sponsored by a family member and not by “a political organization or candidate for public

office” (Rule 4.1(a) (5)), the event was not a fund raiser (Rule 4.1(a) (4)), and the event did not involve a public official who was running for office or who had any matters before or likely to come before the inquiring Judicial Official.

Based upon the fact that the dinner is co-sponsored by a political party, the Judicial Official is prohibited by Rule 4.1(a) (5) from attending or purchasing a ticket to the dinner and *a fortiori* cannot be a speaker at the dinner. Furthermore, this is not an event that concerns the law, the legal system or the administration of justice and therefore, consistent with Rule 3.7(a) (4), the Judicial Official could not speak at the dinner even if the dinner was not sponsored (or in this case co-sponsored) by a political organization, albeit in that instance the Judicial Official would be permitted to attend the dinner. See Rule 3.7, Comment (3).

- IV. The Committee discussed **Informal JE 2015-04** concerning whether a Judicial Official may receive an award at a non-law related event and be recognized by the state chapters of an international, not-for-profit corporation committed to enriching, sustaining and ensuring the culture and economic survival of its members’ ancestry/ethnicity. The members requested additional information and tabled further discussion until the next meeting (which was tentatively scheduled for the week of February 23, 2015).
- V. Judge Keller recused herself from participating in Informal JE 2015-03 and exited the teleconference at 9:54 a.m.
- VI. The remaining members of the Committee discussed **Informal JE 2015-03** concerning whether a Judicial Official has a duty to report attorney misconduct if the attorney repeatedly failed to appear at scheduled events in multiple cases over a period of time, the attorney sent an ex parte communication addressed to the Judicial Official, including medical information in support of a motion to re-open a case, and most recently, when the inquiring Judicial Official was trying to get the lawyer in court, for a scheduled hearing on a motion filed by that attorney, casflow office reached the lawyer on the telephone and the lawyer said that he/she would be 15 minutes late but instead was several hours late because the lawyer went to another courthouse for a different matter first.

In one case, in which the attorney was the legal representative of a party, the attorney did not appear for a status conference approximately one year ago. No continuance had been requested and opposing counsel was present. The casflow coordinator reached the lawyer by telephone and the lawyer reported that he/she had “mixed up” the dates, so the status conference was rescheduled. On the second date for the conference, once again no continuance was requested, opposing counsel appeared

and the subject lawyer was not present at the scheduled start of the conference. The lawyer called later and stated that he/she was not coming due to a health issue. The matter was rescheduled to a third date. On that date, no continuance was requested, opposing counsel was present on time, and the subject attorney appeared several hours later, after opposing counsel had been released. The subject attorney filed a caseflow request that same date indicating that he/she had a previously scheduled status conference in another judicial district. The status conference was rescheduled to a fourth date, and again counsel did not appear at the start of the conference. The caseflow coordinator contacted the attorney and the attorney appeared approximately one and one half hours late. Opposing counsel had appeared on time. The subject attorney was warned that in light of the foregoing history, the case would be dismissed if the attorney failed to appear in the future. The case was dismissed several months later when the attorney failed to appear for a status conference, no continuance or caseflow request was filed, opposing counsel was present as directed, and caseflow was unable to contact the attorney. The subject attorney filed a motion to reopen the dismissal, which was scheduled for a hearing. The subject attorney was not present at the scheduled time for the hearing and when contacted by the caseflow office, the attorney stated he/she would be there in 15 minutes but instead was several hours late because the attorney went to another courthouse for a different matter prior to reporting for the hearing on the motion to reopen.

The inquiring Judicial Official also dismissed the subject attorney's personal case, in which the attorney was a party to the action for failing to appear on the date scheduled for jury selection. In several other cases, in which the attorney was the legal representative of a party, the subject attorney failed to appear for scheduled events or improperly filed a caseflow request (instead of a request for a continuance), on the day of a scheduled event. The inquiring Judicial Official told the attorney in the past not to use caseflow requests and not to file last minute caseflow requests unnecessarily, including entering one or more written orders stating that counsel is to refrain from filing unnecessarily late requests. The attorney also was cautioned not to file continuance requests under the guise of a caseflow request as it may not get to the court in a timely manner. In the instance where the attorney's personal case was dismissed, which was over a year ago, the Judicial Official set forth in an articulation that the attorney had improperly used a caseflow form, however, but thereafter the attorney continued to use caseflow forms in the same improper manner.

Rule 1.2 of the Code of Judicial Conduct states that a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.

Rule 2.15 of Code of Judicial Conduct states, in relevant part, as follows:

(b) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall take appropriate action including informing the appropriate authority.

...

(d) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

The Comments to the foregoing Rule states, in relevant part, as follows:

(1) Taking appropriate action under the circumstances to address known misconduct is a judge's obligation. Except as otherwise provided in subsection (e) [not relevant to this inquiry], subsections (a) and (b) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

...

(3) Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include, but are not limited to, communicating directly with the lawyer who may have committed the violation or reporting the suspected violation to the appropriate authority or other agency or body.

Rule 3.4 of the Rules of Professional Conduct, Fairness to Opposing Party and Counsel, prohibits a lawyer from, inter alia, knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

Rule 3.5 of the Rules of Professional Conduct, Impartiality and Decorum, provides, inter alia, that a lawyer shall not communicate ex parte with a judge, juror, prospective juror or other official during a proceeding unless authorized to do so by law or court order and also prohibits a lawyer from engaging in conduct that is intended to disrupt a tribunal or ancillary proceedings.

Rule 8.4 of the Rules of Professional Conduct notes that it is professional misconduct for a lawyer to, inter alia, engage in conduct that is prejudicial to the administration of justice.

On several prior occasions this Committee has been asked about the duty of a Judicial Official to report unprofessional conduct. In [JE 2009-03](#), in response to an inquiry whether a judge had a duty to refer an attorney to a disciplinary authority for alleged misconduct during a proceeding, the Committee stated that while Canon 3(b)(3) and its Commentary note that a judge should take or initiate appropriate disciplinary measures for unprofessional conduct that the judge becomes aware of, the judge has discretion to report the matter depending upon the seriousness of the conduct and the circumstances involved and that the inquiring Judicial Official should be guided by those provisions in exercising his or her own discretion as to whether to report the attorney's conduct. In [JE 2010-06](#), the Committee advised the inquiring Judicial Official that he or she should report an out-of-state attorney who had testified that he had commingled funds in the attorney's law office account which was held in a state (like Connecticut) in which the commingling of funds was an ethical violation. The Committee noted that a commonly used method to report misconduct that occurs on the record is to forward a copy of the transcript to the appropriate disciplinary authority with a cover letter stating that the matter is being referred for such consideration as the disciplinary authority deems appropriate, however, the Judicial Official may report the misconduct in any manner that he or she determined was appropriate under the circumstances. Finally, in [JE 2010-10](#), the Committee addressed the question of the duty of a judge or a second judge with supervisory responsibilities to whom the first judge had reported information, to report possible misconduct of a third judge. Based upon the facts, the Committee determined that while there was no specific requirement under Canon 3(b)(3) to report the judge's conduct to a disciplinary authority, both judges had a duty to take or initiate appropriate disciplinary measures if, based upon the quality of the information they received, they believed that the judicial official acted unprofessionally and in violation of the Code of Judicial Conduct. The Committee further found that the first judge had taken appropriate measures by reporting the information to the second judge. With respect to the second judge, the Committee determined that the judge had discretion to decide whether to take or initiate disciplinary measures. If after evaluating the quality of the information received, the

second judge was satisfied that there was a sufficient, credible factual basis to conclude that the judge's conduct constituted a substantial violation of the Code, then that judge had a duty to take or initiate disciplinary measures. The Committee further noted that if the information provided to the second judge was sufficient to warrant further reasonable investigation with respect to obvious and readily available sources, the judge should undertake such reasonable investigation in order to clarify the factual situation.

In this case, the inquiring Judicial Official has personal knowledge of the attorney's repeated failures to appear before that Judicial Official and that sanctions have been imposed in at least two cases as a result of the attorney's repeated failures to appear in court when scheduled to be present. The Judicial Official also has knowledge that the attorney told the court he/she would be present in 15 minutes but instead went to a different courthouse first and appeared hours later. In each of the instances of failure to appear or appearing tardy, opposing counsel was present and the attorney's conduct resulted in delays in court proceedings. In addition, the attorney often would file a caseflow request in lieu of a request for a continuance, and would do so on the date when the attorney was scheduled to appear such that there was no time to rule on the matter or for opposing counsel to obtain advance notice of the request, even after the attorney had been advised by the court that was not the proper means for requesting a continuance.

Based upon the facts presented, the Committee unanimously determined that the judge has knowledge that the attorney has engaged in a pattern of conduct in violation of Rules 3.4, 3.5 and 8.4 of the Rules of Professional Conduct. The Committee further determined, in accordance with Rules 1.2 and 2.15 of the Code of Judicial Conduct, that the inquiring Judicial Official has an obligation to report the attorney to the appropriate disciplinary authority because the violation "raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." See also Comment (1) to Rule 2.15. As noted in this Committee's prior opinions, if transcripts or other documents exist that set forth the subject attorney's failures to appear and other alleged misconduct, one option available to the inquiring Judicial Official in discharging his or her obligation to report the attorney to the appropriate disciplinary authority is to send a copy of those documents to the Statewide Grievance Committee for such action as it deems appropriate.

VII. The meeting adjourned at 10:01 a.m.