

Committee on Judicial Ethics
Teleconference
Thursday, April 16, 2015

Members present via teleconference: Judge Christine E. Keller, Chair, Judge Maureen D. Dennis, Vice Chair, Judge Barbara M. Quinn, Professor Sarah F. Russell and Judge Thomas J. Corradino (alternate). Staff present: Attorney Martin R. Libbin, Secretary and Attorney Viviana L. Livesay, Assistant Secretary.

MINUTES

- I. With the above noted Committee members in attendance, Judge Keller called the meeting to order at 9:31 a.m. Although publicly noticed, no members of the public were present.
- II. Judge Quinn, Judge Dennis and Professor Russell approved the March 19, 2015 meeting minutes. (Judges Keller and Corradino abstained.)
- III. The Committee ratified **Emergency Staff Opinion JE 2015-06** concerning whether a Judicial Official may attend a reception and concert as the guest of a municipal official and the Center for Family Justice.

The invitation was from the Mayor, whom the Judicial Official knows. The reception is by invitation only. According to the Mayor's office, the Center for Family Justice is co-hosting the event in name only – they are not contributing financially to the event.

The value of the tickets was estimated at \$50 each by the municipality, which receives a block of tickets free of charge for each event held at the venue where the concert is being held. (Ticket resellers are charging approximately \$140 per ticket.)

According to its Facebook page, The Center for Family Justice's mission is as follows: "The Center for Family Justice is dedicated to strengthening women and families and to eliminating violence and abuse through education, intervention, advocacy, and community collaboration." The company overview states "The Center for Family Justice, Inc. offers advocacy and crisis services, clinical services geared towards all individuals impacted by domestic abuse (violence) and sexual abuse (violence/rape crisis)." It further notes that it services all such victims,

regardless of gender. Their website notes that annually their staff provides the following services:

- Answers more than 950 calls on a 24-hour crisis hotline;
- Assists with the civil and criminal court processes for more than 2,500 survivors of domestic violence;
- Responds to more than 500 survivors of sexual assault and their families;
- Provides a safe home for more than 100 women and children fleeing domestic abuse;
- Coordinates the investigations of more than 170 cases of child sexual and severe physical abuse, developing service plans for the young survivors and their families;
- Provides psycho-educational support to more than 1,200 survivors of domestic violence, planning for their safety and promoting self-sufficiency.
- Educates approximately 4,000 members of the community about the issues of domestic violence, sexual assault and child abuse to prevent future violence and spread the word that about the services we offer at The Center for Family Justice.
- Teaches more than 2,000 children and teens about building healthy relationships, bullying prevention and dating violence.

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 2.4 (c) states that a “judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge’s judicial conduct or judgment.”

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, inter alia, (1) will interfere with the proper performance of judicial duties, (2) lead to frequent disqualification, or (3) appear to a reasonable person to undermine the judge’s independence, integrity or impartiality.

Rule 3.7 states that subject to Rule 3.1, 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).”

In [JE 2013-26](#), at issue was whether a Judicial Official could assist with the organizational effort to establish a Family Justice Center, which is now the co-sponsor of the invitation that the Judicial Official received in this inquiry. In JE 2013-26, the Committee determined that the Judicial Official could not assist with the organization of the Family Justice Center because the organization was partisan (having a victim-centered focus), the fact that the composition of its membership lacked any defense representation, and its potential for advocacy. The Committee noted that assisting with the organizational effort would cast doubt on the Judicial Official’s impartiality in violation of Rule 1.2.

Now that the Center for Family Justice has been established and is operational, it is clear that the Committee’s concern about the potential for advocacy was well founded. As noted in the Center for Family Justice’s Facebook page and website, it offers advocacy services.

Based upon the facts that the reception is by invitation only and co-sponsored by an advocacy group that provides services to victims of court-involved clients, and that the event does not concern the law, the legal system or the administration of justice, the Judicial Official was advised that the Judicial Official was prohibited by Rules 1.2 and 2.4 from accepting the invitation to attend the reception and concert as a guest of the Mayor and the Center for Family Justice, however, consistent with Comment (3) to Rule 3.7, the Judicial Official may purchase his or her own ticket and attend the concert.

- IV. The Committee ratified **Emergency Staff Opinion JE 2015-07** concerning whether a Judicial Official may be a contestant on the television reality show “The Amazing Race”.

To the best of the Judicial Official’s knowledge, there is a prize for the winning team but otherwise there is no compensation, although expenses for participating in the race are included (i.e. travel, etc.). The Judicial Official would use his or her vacation time to cover the period away from work. The notice for last season’s open try outs stated that the winning team gets a prize of \$1,000,000 and that the race lasts approximately 25 days. Prior year’s instructions indicate that individuals may apply either as a two-person team or as a single person. The Judicial Official did not

indicate whether he or she would be applying as part of a team or as an individual.

Rule 1.2 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 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 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 to allow others to do so.”

Rule 2.1 states that the judicial duties of a judge take precedence over all of a judge’s personal and extrajudicial activities.

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, inter alia (1) will interfere with the proper performance of judicial duties, (2) lead to frequent disqualification, or (3) appear to a reasonable person to undermine the judge’s independence, integrity or impartiality.

“The Amazing Race” is a television show which is produced as a commercial product. While some may not consider competing in such an event as “dignified”, Rule 1.2 only prohibits conduct that reflects adversely on the Judicial Official’s honesty, impartiality, temperament or fitness to serve. Rule 2.1 requires that the Judicial Official’s judicial duties take precedence over any personal or extrajudicial duties. Similarly, Rule 3.1 prohibits extrajudicial activities that interfere with the proper performance of judicial duties. Rule 1.3 prohibits the use of prestige of Judicial office to advance the Judicial Official’s or anyone else’s personal or economic interests.

In [JE 2012-13](#), at issue was the extent to which a Judicial Official could cooperate with the publisher of a book that the Judicial Official had authored. This Committee imposed the following condition in order to address concerns about a potential violation of Rule 1.3:

3. The Judicial Official should not use, or permit others to use, his/her judicial title or office or otherwise exploit the judicial position for promotional purposes. The Judicial Official’s title and experience as a judge may, however, be included in the author’s biography as long as the

biographical sketch contains only factual statements intended to inform the reader of the judge's qualifications and experience. (Rule 1.3)

Similarly, in [JE 2014-15](#), this Committee determined that a Judicial Official may author a chapter in a treatise subject to, inter alia, the following conditions:

1. The Judicial Official may not use, or permit others to use, his/her judicial title or office or otherwise exploit the judicial position for promotional purposes. The Judicial Official's title and experience as a judge may, however, be included in a biography as long as the biographical sketch contains only factual statements intended to inform the reader of the judge's qualifications and experience (see Rule 1.3);
2. The Judicial Official should retain the right to review and pre-approve the use of any biographical information about the Judicial Official in connection with the sale or publicity of the treatise (see Rule 1.3);

Based upon the facts provided, the Judicial Official was advised that he or she may apply and participate, if selected, subject to the following conditions:

1. Consistent with Rules 2.1 and 3.1, the Judicial Official receives advance permission to take off the time and doing so does not interfere with the proper performance of his or her judicial duties.
 2. The Judicial Official should make known to the show that his or her title may not be used for promotional or commercial purposes and in order to comply with Rule 1.3, the Judicial Official should retain the right to review and pre-approve the use of any biographical information about the Judicial Official to be used in connection with the show.
 3. The Judicial Official's association with his or her teammate does not result in a violation of the Code of Judicial Conduct (i.e. create an appearance of impropriety in violation of Rule 1.2, result in frequent disqualifications in violation of Rule 3.1, etc.).
- V. The Committee ratified **Emergency Staff Opinion JE 2015-09**. The facts are as follows: A Judicial Official's adult child was injured approximately two years ago while visiting someone in the hospital. The Judicial Official knows the risk manager for the hospital from his/her work as a judge. The

statute of limitations will run in a few weeks and, therefore, the matter either needs to be settled or a lawsuit commenced. The Judicial Official submitted four questions to the Committee:

- 1) May the Judicial Official, in his or her personal capacity, attempt to settle the case with the hospital on behalf of his or her child? If the case settles, the Judicial Official would not take any fee.
- 2) If the Judicial Official cannot negotiate on behalf of his or her child or, if the Judicial Official negotiates, and the case does not settle, may the Judicial Official assist his or her child in hiring an attorney?
- 3) May the Judicial Official preside over trials involving the hospital that is liable for the injuries to his or her child?
- 4) May the Judicial Official conduct mediations involving the hospital that is liable for the injuries to his or her child?

Rule 1.2 of the Code of Judicial Conduct 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 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 2.11 of the Code sets forth the rules requiring disqualification and states, in relevant part, that a Judicial Official shall disqualify himself or herself in any proceeding in which the Judicial Official’s impartiality might reasonably be questioned, including but not limited to the following circumstance: (1) the Judicial Official has a personal bias or prejudice concerning a party or a party’s lawyer, (2) the Judicial Official knows that the Judicial Official, the Judicial Official’s spouse or domestic partner, or a person within the third degree of relationship to either of them or the spouse or domestic partner of such a person is ... (C) a person who has more than a de minimis interest that could be substantially affected by the proceeding, Comment (1) to Rule 2.11 notes that “a judge is disqualified whenever the judge’s impartiality might reasonably be questioned, regardless of whether any of the specific provisions of subsection (a)(1) through (5) apply.”

Rule 3.10 states that “[e]xcept as provided herein, a judge shall not

practice law. A judge may act as a self-represented party and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family but is prohibited from serving as the family member's lawyer in any forum."

Conn. Gen. Stat. § 51-47 (4)(c) prohibits a judge from practicing law: "Each judge shall be an elector and a resident of this state, ... and shall not engage in private practice...."

Question (1): May the Judicial Official, in his or her personal capacity, attempt to settle the case with the hospital on behalf of his or her child? If the case settles, the Judicial Official would not take any fee.

In [JE 2009-12](#), this Committee considered whether a judge may act as a legal advisor to a close family member. This 2009 advisory opinion was based on an older version of the Code. The newer Code, which took effect on January 1, 2011, created the following exception to the practice of law ban: a judge is now permitted to "act as a self-represented party and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family but is prohibited from serving as the family member's lawyer in any forum." In [JE 2009-12](#), this Committee unanimously determined that the Code prohibits judges from engaging in the "practice of law," as that term is defined in Practice Book 2-44A and agreed that a judge should not act as a legal advisor to a family member or engage in any potential settlement discussions. The Committee also determined that the Code does not prohibit a judge from providing family members with emotional or moral support, or personal advice based on common sense and good judgment. The Committee indicated that a judge may attend meetings with the family member's attorney for those purposes alone.

In interpreting a similar provision concerning the practice of law, the New York advisory committee concluded that a full-time judge may serve as the executor of a parent's estate, and may give uncompensated legal advice to his/her parent, but may not serve as the attorney for the estate. See [NY Opinion 14-03](#). The New York Committee also cited prior opinions where it determined that a judge may not serve as his or her parent's attorney during an eviction proceeding, may not prepare wills and may not serve as an additional signatory on a sibling's law office escrow account.

While Rule 3.10 allows a judge to give legal advice to and draft or review documents for his/her family member, a judge is prohibited from serving as the family member's lawyer in any forum. The term "any forum" was interpreted to include any proceeding which involves a formal dispute resolution process such as settlement negotiations. The Judicial Official

was advised that he/she should not attempt to settle the case with the hospital on behalf of his or her adult child.

Question (2): If the Judicial Official cannot negotiate on behalf of his or her child or, if the Judicial Official negotiates, and the case does not settle, may the Judicial Official assist his or her child in hiring an attorney?

Under Rule 3.10, a judge may, without compensation, give legal advice to a member of the judge's family. The Judicial Official was advised that assisting a child in hiring an attorney and reviewing any contractual documents related to hiring of that attorney falls within this exception.

Question (3): May the Judicial Official preside over trials involving the hospital that is liable for the injuries to his or her child?

Consistent with this Committee's opinion in [JE 2009-12](#) and Rule 1.2's obligation to perform the duties of the judicial office impartially, the Judicial Official was advised that he/she should disqualify himself or herself from presiding over trials involving the hospital for at least the duration of the family member's case. (Rule 2.11(a)).

Question (4): May the Judicial Official conduct mediations involving the hospital that is liable for the injuries to his or her child?

For the reasons noted in Question (3) above, the Judicial Official was advised that he/she should not conduct mediations involving the hospital for at least the duration of the family member's case.

It should be noted that in [Emergency Staff Opinion JE 2012-08](#), this Committee agreed that a Judicial Official should recuse himself or herself from participating in a pretrial conference involving a law firm that represents the Judicial Official in a pending arbitration matter when the law firm was retained by the Judicial Official's insurer.

- VI. **Request for Reconsideration of JE 2015-01:** The Committee granted the written request to reconsider and responded by reaffirming its original opinion. The Committee expressed no opinion as to the Court's inherent authority to take separate action in regard to the ethical issues contained in the Code of Judicial Conduct.
- VII. The meeting adjourned at 10:05 a.m.