

Committee on Judicial Ethics
Teleconference
Monday, May 20, 2013

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Maureen D. Dennis, Judge Christine E. Keller, Professor Jeffrey A. Meyer 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 present, Justice Schaller called the meeting to order at 9:38 a.m. Five members of the public were in attendance.
- II. The Committee approved the Minutes of the April 19, 2013 meeting with a correction.
- III. The Committee discussed Informal **JE 2013-19**. The facts are as follows: A Judicial Official, prior to taking the oath of office, referred all pending case matters from his or her law practice to various attorneys without a referral fee. Does the Judicial Official have a duty to disclose or recuse if any attorney to whom the Judicial Official referred one or more cases appears before the Judicial Official? If so, is there a time after which the Judicial Official no longer has to disclose or recuse him/herself?

Rule 1.2 of the Code of Judicial Conduct provides 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 2.11 states that a judge “shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including, but not limited to, the following circumstances: (1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of the facts that are in dispute in the proceeding....”

Based on the facts presented, including that the referrals occurred within the last year and that the Judicial Official has no economic interest in the referral relationships, the Committee unanimously determined that the Judicial Official is not automatically disqualified from presiding over future cases involving any attorney to whom the Judicial Official previously

referred a case while in private practice, subject to the following conditions:

- (1) The case is not one that was referred to the attorney by the Judicial Official;
- (2) The Judicial Official does not believe that he or she has any personal bias (favorable or unfavorable) involving the client or the attorney; and
- (3) The Judicial Official should disclose the referral relationship for a reasonable period of time, which is not less than two years from the date of the Judicial Official's commencement of service as a judge. See [JE 2011-25](#) & [JE 2008-21](#).

- IV. The Committee discussed Informal **JE 2013-20**. The facts are as follows: An attorney to whom a Judicial Official used to refer cases while the Judicial Official was in private practice, and who also referred cases to the Judicial Official, used to meet the Judicial Official socially for lunch approximately once every 6 months. Does the Judicial Official have a duty to disclose the nature of their relationship or recuse himself or herself if the attorney appears before the Judicial Official and, if so, for how long does the duty to disclose or recuse last?

Rule 1.2 of the Code of Judicial Conduct provides 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 2.4 (b) states that a judge “shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment.”

Rule 2.11 states that a judge “shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including, but not limited to, the following circumstances: (1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of the facts that are in dispute in the proceeding....”

Based on the facts presented, including that this is a past relationship and no longer ongoing, the Committee determined that the Judicial Official and attorney have a minimal social relationship that does not require disqualification provided that:

- (1) The Judicial Official does not believe that he/she has a personal bias or prejudice (favorable or unfavorable) involving the attorney; and
- (2) The Judicial Official fully discloses the relationship with the attorney to the parties and their counsel for a reasonable period of time, which is not less than two years from the date of their last social contact (including any ongoing social contacts). Thereafter, if a motion to disqualify is filed, the Judicial Official should exercise his or her discretion in deciding the motion based upon the information provided in the motion and the accompanying affidavit, as provided for in Connecticut Practice Book § 1-23, as well as the particular circumstances of the case.

V. The Committee ratified Emergency Staff Opinion **JE 2013-21**.

VI. The Committee discussed Informal **JE 2013-22**. The facts are as follows: A recently appointed Judicial Official's former office and colleagues held a party in honor of the Judicial Official's appointment to the bench. The Judicial Official received a gift from an attorney attendee who had been opposing counsel in various cases prior to the Judicial Official's appointment to the bench. The Judicial Official believes that the gift is a book. The attorney that provided the gift is likely to appear before the Judicial Official in the future. May the Judicial Official accept the gift?

Rule 1.2 requires a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and to avoid impropriety and the appearance of impropriety.

Rule 3.13 of the Code (Acceptance and Reporting of Gifts) states in part that:

- (a) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.
- (b) Unless otherwise prohibited by law, or by subsection (a), a judge may accept the following without publicly reporting such acceptance:
 - (1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;
 - (2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification under Rule 2.11;
 - (3) ordinary social hospitality;...

Based on the facts presented and that the Committee previously determined in JE 2013-09 and JE 2013-10 that gifts incident to a dinner in honor of a Judicial Official's appointment to the bench could be accepted as part of ordinary social hospitality within the meaning of Rule 3.13 provided that the value of the gift was not so great that a reasonable person would believe that the gift would undermine the Judicial Official's independence, integrity or impartiality and that the Judicial Official need not report the gift unless its value is outside the bounds of ordinary social hospitality based upon the relationship of the individuals and any historic gift giving between them, the Committee unanimously determined that the Judicial Official may accept the gift subject to the following conditions:

- (1) In accordance with Rule 3.13(a), the nature or value of the gift (whether a book or some other item) is not so great that a reasonable person would believe that the gift would undermine the judge's independence, integrity or impartiality (in which event the judge may not accept the gift); and
- (2) The value of the gift is consistent with the bounds of ordinary social hospitality based upon the relationship of the individuals and any historical gift giving between them, in which event the value of the gift need not be reported pursuant to Rule 3.13(b)(3) and Rule 3.15.

VII. The meeting adjourned at 9:54 a.m.