

Committee on Judicial Ethics  
Teleconference  
Thursday, June 16, 2016

Committee members present via teleconference: Judge Christine E. Keller (Chair), Judge Maureen D. Dennis (Vice Chair), 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. Judge Keller called the meeting to order at 9:36 a.m. Although publicly noticed, no members of the public were present.
- II. The Committee approved the minutes of the May 19, 2016 meeting.
- III. The Committee briefly discussed **Informal Opinion JE 2016-08**, but did not issue a final recommendation. Instead, the Committee asked staff to conduct additional research on the issue of exculpatory evidence. It was agreed that this inquiry would be handled as an emergency staff opinion and ratified at the next monthly meeting. The Committee stated that the Judicial Official may send a signed copy of the court transcript to all counsel of record, as well as to any self-represented parties.
- IV. The Committee discussed **Informal Opinion JE 2016-09**. The facts are as follows: In 2001, the Connecticut Bar Foundation (hereinafter, CBF), as part of its Oral History Project on Connecticut's women lawyers (hereinafter, Project) adopted an initiative to create photographic portraits of all state and federal women judges, magistrates and state referees in Connecticut. During the initial phase of the Project, seventy-six portraits were completed. Those portraits were the subject of an exhibit at the Legislative Office Building in 2007 and currently are on display at the University of Connecticut School of Law. The Project seeks to take photographs of the additional women who have been appointed judges, magistrates and state referees in Connecticut since that time. As in the past, the photographs will be owned by the CBF and will not be used for commercial purposes. Permission will be sought to use the photographs for the Project, as it may change over time, including, but not limited to, using the photographs to solicit grant funding for the Project, and inclusion of the photographs in publications, documentaries and exhibits of the Project. The photographer, who is an attorney, will not be compensated but will be reimbursed for expenses. The Judicial Officials will not be compensated, but will receive a copy of their photograph that is included in the Project. The following questions were raised:

1. May Judicial Officials consent to participate by allowing their photographs to be included in the Project?
2. If the answer to question 1 is yes, may a Judicial Official who is a co-chair of the Project send a letter concerning the Project to Judicial Officials to solicit their participation in the Project?

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 and shall avoid 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 allow others to do so.” Comment (4) to that Rule states that “Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge’s office in a manner that violates the Code or other applicable law. In contracts for publication of a judge’s writing, the judge should retain sufficient control over the advertising to avoid such exploitation.”

Rule 2.11, concerning disqualification, states, in part, as follows:

- (a) 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 facts that are in dispute in the proceeding....

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 will interfere with the proper performance of judicial duties, lead to frequent disqualification or appear to a reasonable person to undermine the judge’s independence, integrity or impartiality.

Rule 3.7 concerns participation in educational, religious, charitable, fraternal, or civic organizations and activities. Subject to the requirements in Rule 3.1, a judge is permitted to participate in various activities sponsored by or on behalf of such entities. Subject to the requirements in Rule 3.1, subsection (a) (4) specifically authorizes judges “appearing or speaking at, receiving an award or other recognition 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”.

This Committee has previously been asked about the use of a judicial official's photo and biographical information in advertising in various contexts. For example, in [JE 2008-14](#), the Committee determined that a Judicial Official could participate in a law-related educational program subject to various conditions, including that “the Judicial Official should retain the right to review and pre-approve the use of any biographical information or photograph to ensure that the information is presented in a tasteful and dignified manner. It was noted that control over the use of such information by the Judicial Official is needed to ensure that Canon 2 (b)'s prohibition against lending the prestige of judicial office to advance the private interests of others is not violated.” Similarly, in [JE 2014-10](#), the inquiring Judicial Official was told that he or she could permit the use of the Judicial Official's name with respect to an annual writing competition sponsored by an ethnic bar association subject to various conditions. One such condition was that the “Judicial Official should retain the right to review and pre-approve the use of any information or other material used to solicit contributions to fund the competition.”

Only a few older decisions from other jurisdictions were located. In Kansas Judicial Ethics Opinion JE-48, the Committee advised the inquiring judge that he or she could not pose in judicial attire in his or her courtroom for a professional photographer who intended to use the photographs in demonstrating his work, which would be circulated to various advertising agencies. The Committee noted that the proposed conduct violated Canon 2B of their Code, which provided, in pertinent part, “A judge ... should not lend the prestige of his office to advance the private interests of others...” In New York Opinion 95-141, the New York Advisory Committee on Judicial Ethics advised that a judge could allow her photograph to be used as part of a photographic exhibit of prominent local women, which exhibit was to be displayed in local public libraries. The intent of the exhibit was to provide encouragement for young women to excel in school and advance into college. The inquiring judge was concerned that some commercial use of the exhibit might be made by the photographer, who also owned a local firm which operated under a different name. Based upon the facts presented, including that the photographer assured the judge that the only reference in the exhibit would be to the photographer's name, the New York Committee determined that the Judicial Official would not be lending the prestige of office to advance the interests of the photographer, and therefore could allow her photograph to be displayed as part of the exhibit.

Based upon the facts provided, including that the photographs will not be used for any commercial purposes, the Committee unanimously determined that (1) Judicial Officials may consent to being photographed provided that (a) they retain the right to review and pre-approve the use of any biographical information or photograph to ensure that the information is presented in a tasteful and dignified

manner and that consistent with Rule 3.7(a)(4), if the photograph is to be used for a fund-raising purpose, the purpose is one that concerns the law, the legal system or the administration of justice, and (b) should the photographer appear before a photographed Judicial Official within a reasonable period of time, but not less than two years, the Judicial Official discloses the facts related to the photograph and her receipt of a copy, and (2) the inquiring Judicial Official may send a letter concerning the Project to Judicial Officials to solicit their participation in the Project.

- V. The Committee discussed **Informal Opinion JE 2016-10** concerning whether a Judicial Official may consent to the use of his or her name for an ethnic bar association's annual awards dinner. An ethnic bar association wants to permanently rename its annual awards dinner after a Judicial Official who was instrumental in the creation of the bar association. The dinner has been held for the past couple of years, but financial data is only available for last year. According to the Bar Association President, the program is not designed to be a fund-raiser. The President stated that in addition to charging a fee for the dinner slightly beyond the cost charged by the banquet facility, a program booklet is produced that includes sponsorships. The additional revenue is used to pay for honorees and their family to attend the dinner, and miscellaneous expenses related to the dinner and awards. Last year there was a net surplus of approximately \$1,500, however, the organization spent approximately \$1,000 to upgrade its website in order to allow it to accept reservations, etc., and therefore believes that the net profit last year was only \$500. The President also stated that the association does not plan to rename any of the individual awards in the judge's name.

Rule 1.2 of the Code 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 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 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 will interfere with the proper performance of judicial duties, lead to frequent disqualification or appear to a reasonable person to undermine the judge's independence, integrity or impartiality.

Rule 3.7 concerns participation in educational, religious, charitable, fraternal, or civic organization and activities. Subject to the requirements in Rule 3.1, a judge is permitted to participate in various activities sponsored by or on behalf of such entities. Subject to the requirements in Rule 3.1, subsection (a)(4) specifically authorizes judges “appearing or speaking at, receiving an award or other recognition 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”.

In [JE 2011-05](#), this 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 determined that the ethnic awards dinner does not qualify as an activity that concerns the law, the legal system or the administration of justice.

In reaching its opinion, the Committee considered several of its prior opinions regarding the use of a Judicial Official’s name: [JE 2009-11](#) (Judicial Official should not allow this use of his or her name to be used in advertising a dinner event that was determined to be a fund raiser by a nonprofit organization), [JE 2010-30](#) (Judicial Official may be honored at an event hosted by a law related organization that provides legal services to people who qualify under its standards of indigency, but that special care must be taken to ensure that the Judicial Official’s name was not used to encourage law firm participation and that no appearance is created that any of the donors were in a special position to influence the Judicial Official), [JE 2010-31](#) (Judicial Official may not lend his or her name to a campaign whose purpose was to solicit existing members of a law related organization to provide additional funds to become sustaining members of the organization), and [JE 2010-32](#) (Judicial Official may accept an honorary degree from a college in connection with a speaking appearance by the Judicial Official at the college subject to various conditions).

In [JE 2014-10](#), this Committee considered whether a Judicial Official may lend his/her name to an annual writing competition sponsored by an ethnic bar association. While the competition itself did not appear to be fund-raising event, the association planned to raise funds for the financial award through letters of solicitation to potential donors. The Committee determined that the event does not qualify as one that concerns “the law, the legal system or the administration of justice” and permitted the use of the judge’s name 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. In accordance with Rule 1.3, the Judicial Official inform the bar association that it cannot use the Judicial Official's name in connection with soliciting funding for the competition. For example, the solicitation could state it is seeking funding for the annual writing competition, but it cannot state it is seeking funding for the annual Judge X writing competition; and
3. The Judicial Official should retain the right to review and pre-approve the use of any information or other material used to solicit contributions to fund the competition.

The Committee also considered [JE 2009-39](#) concerning whether an awards dinner qualified as a fund-raiser. The Committee unanimously determined in JE 2009-39 that a sports award banquet qualified as a fund-raising event because the funds that would be collected from ticket sales, including higher priced patron tickets and the program book, would be applied, not only to the specific costs associated with the banquet, but also to support the scholarship program.

Based upon the facts presented, including that the dinner does not qualify as one that concerns "the law, the legal system or the administration of justice" and is not designed to be a fund-raiser (although it may generate an small amount of unanticipated profit), the Committee concluded that the Judicial Official may consent to the use of his/her name in connection with the ethnic bar associations' annual awards dinner, 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. In accordance with Rule 1.3, the Judicial Official must inform the bar association that it cannot use the Judicial Official's name in connection with soliciting funds for the sponsorships in the program booklet. For example, the solicitation could state it is seeking funding for the annual awards dinner, but it cannot state it is seeking funding for the annual Judge X awards dinner; and
3. The Judicial Official should retain the right to review and pre-approve the use of any information or other material used to solicit contributions to fund the awards dinner.

VI. Old Business

The Committee was informed that [Winter v. Wolnitzek](#) (May 12, 2016) is on appeal. The Committee agreed that staff should forward a copy of this federal decision to Probate Administration for its information.

VII. The meeting adjourned at 10:21 a.m.