

Committee on Judicial Ethics
Teleconference
Thursday, July 16, 2015

Members present via teleconference: Judge Christine E. Keller, Chair, Judge Barbara M. Quinn, Judge Angela C. Robinson, Professor Sarah F. Russell and Judge Thomas J. Corradino, Alternate. Staff present: Attorney Martin R. Libbin, 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. The Committee members present, (with the exception of Judge Robinson who abstained), approved the minutes of the June 18, 2015 meeting.
- III. The Committee discussed **Informal JE 2015-14** concerning whether a Judicial Official may sign a letter in support of a co-parenting communication program.

Below is the content of a letter that a Judicial Official has been asked to consider as a recommendation for a co-parenting communication program. The attorney who contacted the Judicial Official is from New York (previously practiced family law in Connecticut) and is affiliated with a relatively new non-profit organization in New York City. The organization is comprised of people who share the mission of supporting parents and children experiencing separation and divorce. The goal of the organization is to introduce these services to the New York bench so that judges in New York can feel comfortable referring parents to a forum that will help them reduce conflict for the benefit of their children. The Judicial Official has been asked to sign one original recommendation letter and the program director would then share it with New York family judges. According to the organization's website, there is a fee to participate in the co-parenting communication program, with a sliding scale available for those who qualify.

Dear Fellow Jurists:

I am XXXXXXXXX. The Judicial Branch is highly cognizant of the conflict that accompanies parents as they transition their families

through separation or divorce. While Connecticut state law mandates participation in a parenting education program for parents who commence a legal case, sometimes that program is not enough and more individualized work is needed to help these parents. The Bench often encounters parents who require additional assistance communicating effectively with each other. Without positive communication, children are caught in the middle of conflict it is well documented that conflict negatively affects children.

Here in Connecticut, we have a number of agencies that specifically offer co-parenting communication services to parents to help them attain the goal of more positive, productive communication by eliminating conflict and building new skills. The benefit of participation in these services is that parents meet together to tackle the challenges that they encounter raising children in two separate homes. Those parents who are successful in learning these skills are able to resolve their parenting disputes and avoid litigation and its harmful effects on both them and their children.

Often, attorneys will include a referral in a court order which will be approved by a judge. The attorneys, having the most contact with his/her client, is best poised to recommend additional services that can't be met by a busy court. Sometimes judges will refer parents to these services, often after the parents have appeared before the Court because the parents demonstrate that they can not communicate with each other about basic information intrinsic to the co-parenting relationship, such as the need to share information about a child who requires a medication regimen. Most parents desire to know what goes on with their children while in the care of the other parent. Without other recourse, parents then use the court system to engage in these discussions.

These services can be effective at any stage of litigation. Even parents who resolve their matters with an agreement do not necessarily eliminate the conflict that can be detrimental to their future co-parenting relationship. As a result, we frequently see parties return to court post-judgment with a need to engage in this work.

I have found these services to be a positive resource for parents who can benefit from education and support as they navigate the reconfiguration of their families.

Please do not hesitate to contact me to discuss further the benefit that these services have provided to Connecticut parents.

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.”

In reaching its conclusion, the Committee considered analogous ethics advisory opinions from New York and Florida. The New York ethics advisory committee issued the following opinions in which it advised that judges cannot endorse or promote service providers, either actively or tacitly: *New York 10-27* (judge may not endorse or promote education programs offered by a particular company, but may include the company’s name and contact information on a list of possible programs a defendant may choose in order to earn a reduction or dismissal of pending charges. If no other programs exist, the judge may provide a defendant with an information sheet about the company); *New York 08-35* (judge cannot endorse or promote a defensive driving program sponsored by the National Safety Council, but may include it on a list of possible programs); *New York 03-107* (a judge should not permit a private, for-profit mediation program to place promotional brochures in the courthouse and should not suggest that parties use the service); *New York 99-151* (a judge may not be an advisor nor allow his or her name to be listed as an advisor on the letterhead of a for profit company involved in courtroom automation. To do so “would suggest that the judge is promoting the company and bestow upon the company a misleading official imprimatur...”); *New York 98-98* (a judge should not submit a letter for publication in a bar association’s newsletter encouraging attorneys to pay a fee and enroll in the association’s legal referral service); and *New York 97-16* (a judge may not submit a letter supporting a private business in its bid to continue to provide services to a municipality).

The issue of promoting or endorsing a company or product was also considered by the Florida Supreme Court Judicial Ethics Advisory Committee in the following opinions: *Florida JEAC Op. 2014-06* (a judge may not appear in a video discussing the benefits of new technology because the facts strongly suggest that the primary purpose of the video is

to promote the technology to other potential purchasers); *Florida JEAC Op. 1997-29* (a judge may not ethically appear in a company's promotional sales video, in which the judge demonstrates the company's equipment and attests to its capabilities, without endorsing the company or its equipment. The committee noted that "[w]hile not amounting to a direct endorsement, it is abundantly clear that a judge, who appears in a promotional sales video and provides a testimonial for viewing by prospective customer, is at the very least tacitly endorsing the product...."); *Florida JEAC Op. 2006-14* (a judge may not allow personal interview to appear in a documentary film to be used commercially in the marketing campaign for a reading instruction program); *Florida JEAC Op. 2000-15* (a judge may not tape public service announcements to increase public awareness about local non-profit organizations and their projects); *Florida JEAC Op. 1982-01* (a judge may not permit his/her name to appear on stationery or brochures promoting a dispute conciliation service); and *Florida JEAC Op. 1976-8* (a judge may not provide a taped interview on behalf of a local boys' club to be shown on a telethon for fundraising).

Although the recommendation letter does not specifically mention the name of the organization or the name of the co-parenting communication program, it does appear to be a tacit endorsement of the educational program. The facts also seem to suggest that the primary purpose of the letter is to market these services to the New York bench. Therefore, consistent with Rule 1.3 and its prohibition on lending the prestige of judicial office to advance the private interests of others, the Committee unanimously agreed that the Judicial Official should not sign the letter in support of the co-parenting communication program.

IV. The meeting adjourned at 9:36 a.m.