

Committee on Judicial Ethics
Teleconference
Tuesday, August 6, 2013

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Christine E. Keller, Vice Chair, Judge Maureen D. Dennis, Judge Barbara M. Quinn and Professor Sarah F. Russell. Staff present: Attorney Viviana L. Livesay, Assistant Secretary.

MINUTES

- I. With the above noted Committee members present, Justice Schaller called the meeting to order at 9:39 a.m. New members Judge Barbara Quinn and Professor Sarah Russell were welcomed. Although publicly noticed, no members of the public were in attendance.
- II. The Committee approved the Minutes of the July 18, 2013 meeting. (Judge Keller abstained.)
- III. The Committee discussed **Informal JE 2013-34**. The facts are as follows. Prior to a Judicial Official's appointment to the bench, a Judicial Official referred several cases in which the Judicial Official represented the plaintiff to another attorney. The successor counsel has now obtained a judgment in one of these referred cases and will be submitting a motion for payment of attorney's fees to the court for approval. The motion will include a claim on behalf of the Judicial Official for attorney's fees, as well as the successor counsel's claim for attorney's fees for the time spent and work performed on the case. May the Judicial Official prepare and sign an affidavit regarding the time spent and work he or she performed on the case and the hourly rate requested?

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 1.3 prohibits a Judicial Official from using the prestige of office to advance the Judicial Official's personal or economic interests.

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."

Based on the Committee's prior informal opinions in [JE 2008-19](#), [JE 2008-19A](#), [JE 2013-08](#) and [Emergency Staff Opinion JE 2012-20](#), the Committee unanimously determined that it is ethically permissible for the Judicial Official to prepare and sign the affidavit and accept payment, subject to the following conditions:

1. The amount to be paid should reasonably reflect the time spent and work performed;
2. Full disclosure should be made to the client;
3. The Judicial Official should not refer to his or her judicial position in the affidavit;
4. The Judicial Official should consider whether the decision to accept payment may necessitate the Judicial Official's disqualification to hear matters in the future involving the client or the attorney to whom the case was referred. The Judicial Official may inquire further of the Committee with regard to disqualification in the event the situation arises.

- IV. The Committee discussed **Informal JE 2013-35** concerning whether a Judicial Official may attend, be acknowledged or honored, and speak at a fund-raising event co-hosted by a section of the CBA and a national nonprofit 501(c)(3) law-related organization whose mission is to achieve full recognition of the civil rights of a particular class of citizens through impact litigation, education and public policy work. The Judicial Official also asked whether he/she may make a donation to the organization at the event or otherwise.

The Judicial Official will not be featured or mentioned on the invitation. While there is no fee to attend the event (a Sunday afternoon cocktail party), there is an expectation that guests will make donations to the organization. The Judicial Official indicated that he/she would recuse himself or herself should the organization or the section ever appear before him/her.

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 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.” The Rule states further that when engaging in extrajudicial activities, the judge shall not participate, inter alia, in activities that will interfere with the proper performance of the judge’s judicial duties, lead to frequent disqualification or appear to a reasonable person to undermine the judge’s independence, integrity or impartiality.

Rule 3.7 of the Code concerns participation in educational, religious, charitable, fraternal, or civic organizations and activities. Rule 3.7 states, in relevant part:

(a) Subject to the requirements of Rule 3.1, a judge 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, receiving an award or other recognition at, being featured on the program of, 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 (2) to Rule 3.7 states that “[e]ven for law related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge’s participation in or association with the organization, would conflict with the judge’s obligation to refrain from activities that reflect adversely on a judge’s independence, integrity, and impartiality.”

Comment (3) to Rule 3.7 states, in part, that “[m]ere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of subsection (a)(4).”

Based upon the information provided, including that the national nonprofit law-related organization engages in impact litigation, education, and public policy work on behalf of a particular class of citizens, the Committee unanimously determined that the Judicial Official should decline to be acknowledged or honored and should not speak at the event, but may attend and make a donation to the organization subject to the following conditions:

1. The organization does not regularly engage in adversary proceedings before the Judicial Official;
2. The Judicial Official’s attendance at the event does not raise concerns about coercion of other potential donors or exploitation of the judicial office and does not demean the office, cast doubt on the

judge's impartiality or interfere with the performance of judicial duties;

3. The Judicial Official should not allow his/her title to be used in conjunction with the event (e.g., by way of a public introduction, award or special recognition, such as sitting at head of table, etc.);
4. If the organization or the section appears before the JO as a party or counsel within a reasonable period of time following the event, the JO should disclose the fact that he/she attended the fund-raising event; and
5. Donations are subject to the following conditions:
 - a. The Judicial Official should request and obtain adequate assurance from the organization that his or her identity as a donor will not be publicized and that his/her judicial title will not otherwise be used by the organization for promotional purposes; and
 - b. For any future cases before the Judicial Official in which either organization or section is involved as a party or counsel, the Judicial Official should consider whether the timing, nature and size of any donation may trigger obligations of disqualification or disclosure under Rule 2.11. Specifically, the Judicial Official should consider the possibility that (i) the timing, nature and size of the donation creates an actual personal bias or prejudice under Rule 2.11(a)(1) requiring disqualification, or (ii) that the timing, nature and size of the donation would otherwise create in a reasonable mind an appearance that the Judicial Official would not be impartial, such that the Judicial Official either should recuse under Rule 2.11(a) or disclose and potentially seek remittal in accordance with Rule 2.11(c). In addition, no matter how small the donation, the Committee recommends in light of the Judicial Official's affirmative obligations under Rule 1.2 that the Judicial Official may wish to take the precautionary measure of disclosing the donation for a reasonable period of time following the donation in any case in which either organization or section appears as counsel or party before the Judicial Official. The Judicial Official also should be mindful of the duty to avoid or minimize disqualifications as suggested by comment to Rule 2.7.

In rendering this opinion, the Committee considered its prior opinions in [JE 2010-30](#) (Judicial Official may be honored at the event that "concerns the law, the legal system, or the administration of justice"); [JE 2012-15](#) (Judicial Official may attend and be honored at the fund-raising event of a

law-related non-profit organization); [JE 2012-25](#) (Judicial Official could not accept an award from MADD at a non-fundraising event, because MADD is a victim support and advocacy group that takes strong positions on DUI cases and lobbies actively on behalf of its interests, as well as receiving a fee from court participants referred to the DUI victim impact panel program); [Emergency Staff Opinion 2012-29](#) (Judicial Official could not accept an award from the Susan B. Anthony Project, a victim support and advocacy group); [JE 2009-32](#) (Judicial Official should not be honored at a fund-raising event of a non-profit organization that engages in litigation, advocacy and political action); [JE 2008-18](#) (Judicial Official may contribute to a legal aid organization and disclosure of such contributions generally is not required unless the amount is such that the Judicial Official's impartiality might reasonably be questioned); and [JE 2012-30](#) (Judicial Official may make a donation to and/or pay for admission to and attend a fund-raising event hosted by The Children's Law Center, an organization that actively participates in ongoing advocacy on behalf of children at the state level, but such donation is subject to satisfaction of several conditions).

- V. The Committee discussed **Informal JE 2013-36** concerning whether a Judicial Official may sign a primary petition on behalf of a political candidate. When a person signs a primary petition, the signatures on the petition are subject to disclosure pursuant to the Freedom of Information Act.

Rule 4.1 of the Code of Judicial Conduct, entitled Political Activities of Judges in General, states in relevant part, as follows:

- (a) Except as permitted by law, or by Rules 4.2 and 4.3, a judge shall not:
- (1) act as a leader in, or hold an office in, a political organization;
 - (2) make speeches on behalf of a political organization;
 - (3) publicly endorse or oppose a candidate for any public office ...

Comment (3) to the foregoing Rule states as follows:

Subsections (a) (2) and (a) (3) prohibit judges from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3.

Comment (5) to Rule 4.1 states as follows:

Judges retain the right to participate in the political process as voters in both primary and general elections.

Conn. Gen. Stat. § 9-410 sets forth the requirements for primary petition forms for candidates for nomination to municipal office or for election as town committee members. Subsection (a) of Conn. Gen. Stat. § 9-410 provides, in relevant part, that:

The form shall provide spaces for the names and addresses of candidates, the offices to which nomination is sought or the positions to which election is sought and the political party holding the primary, and shall provide lines for the signatures, street addresses, dates of birth and the printing of the names of enrolled party members **supporting the person or persons on behalf of whose candidacy the petition is used...** (Emphasis supplied.)

Subsection (b) provides in relevant part:

The names of enrolled party members signing a primary petition need not all be on one sheet but may be on several sheets, but no person shall sign more than one petition page for the same candidate or candidates. . . . Each such sheet shall indicate **the candidate or candidates supported**, the offices or positions sought and the political party the nomination of which is sought or which is holding the primary for election of town committee members.” (Emphasis supplied).

Based on the facts presented and the language contained in Conn. Gen. Stat. § 9-410(a) and (b), which describe the enrolled party members signing the petition as “supporting” the candidate, the Committee unanimously determined that the proposed activity is prohibited by Rule 4.1(a)(3). Given this statutory language, and the fact that petitions are publicly available, a Judicial Officer’s signature on a petition could be viewed as a public endorsement of the candidate. In rendering this opinion, the Committee considered **Florida Opinion 92-32** (improper for judge to sign petition as it may be perceived as an endorsement of the candidate for public office); **Pennsylvania Formal Opinion 2000-1** (majority concluded that judge is prohibited from signing a nomination petition because it is the legal equivalent of a public endorsement and is not akin to exercising the right to vote); **New York Opinions 99-125 and 89-89** (signing a nominating petition is permissible because it is a miniscule act in the overall election process, akin to the voting process); **Arizona Opinion 03-05** (judge may sign a nominating petition provided petition is not intended to be used by candidate as an endorsement); **Wisconsin Opinion 00-2** (judge may sign a nominating petition for a partisan candidate for office, but the judge should consider the precise

language of the petition and whether it may be used for any purpose other than filing with the appropriate public official); and **New Mexico Opinion 96-01** (judge may sign a nomination petition for a judicial candidate).

VI. The meeting adjourned at 10:08 a.m.