

Committee on Judicial Ethics  
Teleconference  
Thursday, October 19, 2017

Committee members present via teleconference: Judge Christine E. Keller (Acting Chair), Judge Robert B. Shapiro and Judge James T. Graham (Alternate). Staff present: Attorney Viviana L. Livesay (Assistant Secretary).

**MINUTES**

- I. Judge Keller called the meeting to order at 9:37 a.m. Although publicly noticed, no members of the public were present.
- II. Judge Keller tabled the approval of the minutes of the September 21, 2017 regular meeting until the Committee's next monthly meeting.
- III. The Committee approved the final version of the opinion letter in **Formal JE 2017-12.**
- IV. The Committee ratified **Emergency Staff Opinion JE 2017-14** concerning whether a Judicial Official may permit an organization to include a sentence in its fundraising event program book giving special thanks to the Judicial Official as the founder and former chair of the charity and for the Judicial Official's commitment to the purpose of the charity throughout the years.

This request for an emergency staff opinion is from the same Judicial Official who submitted the inquiry in advisory opinion [JE 2016-13](#). This Committee determined, in [JE 2016-13](#), that the inclusion of a Judicial Official's name in a fund-raising book under a heading of volunteers was permissible, provided that the Judicial Official's title is not listed unless the titles of other volunteers were also listed. The Committee concluded that the listing of volunteers was comparable to having the Judicial Official's name on fund-raising letterhead.

The Judicial Official now indicates that for this year's fund-raising book, in addition to containing a list of all volunteers, the program book is going to contain a letter that recognizes certain special volunteers. The organization would like to include a sentence in that letter giving special thanks to the Judicial Official as the founder and former chair of the charity and for the Judicial Official's commitment to the purpose of the charity throughout the years. According to the Judicial Official, the fund-raising program book will be left on the registration table for attendees to take on the day of the event.

Rule 1.2 states that a judge "should 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 in part that a judge "may engage in extrajudicial activities, except as prohibited by law." The Rule goes on to note 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 3.1(1)-(3).

Rule 3.7 of the Code concerns a judge's participation in educational, religious, charitable, fraternal, or civic organization 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;....

This inquiry was circulated to the members of the Committee and their input was solicited and received. The Committee agreed that receiving an additional special recognition in a fund-raising event's program book qualifies as "... receiving an award or other recognition at . . . an event of such an organization or entity..." under Rule 3.7 (a)(4). The rule further provides that "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." The Judicial Official was advised that he/she may not permit the inclusion of the sentence in the thank you letter that appears in the program book because the fund-raising event does not concern the law, the legal system, or the administration of justice.

- V. The Committee discussed **Informal JE 2017-15** concerning whether a Judicial Official may serve on the advisory committee of a community ethnic fund-granting organization. A Judicial Official has been asked to participate with an ethnic fund-granting organization, which is a component of a non-law related community organization. The mission of the fund is to harness the philanthropic potential of a certain ethnic community. Money raised in the past has been used to sponsor educational forums and community events, as well as scholarships for high school students and summer reading programs. The organization would like the Judicial Official's input on future projects and/or how to best use funds within the community. The Judicial Official asks whether it is permissible to serve on the ethnic fund's advisory committee.

According to the Judicial Branch's "Case Look-up", neither the fund-granting organization nor the affiliated community organization has been a party to a lawsuit within the last ten years.

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 3.7 (a) of the Code deals specifically with participation with educational, religious, charitable, fraternal and civic organizations and activities. It provides that, subject to the general requirements in Rule 3.1, a judge may participate in activities sponsored by or on behalf of educational organizations not conducted for profit including, but not limited to the following:

- (1) assisting such an organization or entity in planning related to fund-raising and participating in the management and investment of the organization's or entity's funds;
- (2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority;
- (3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;
- (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;

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(A) will be engaged in proceedings that would ordinarily come before the judge; or

(B) will frequently be engaged in adversary proceedings in the court of

of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

In [Emergency Staff Opinion JE 2011-28](#), at issue was whether a Judicial Official could provide a letter of support to a law-related organization for the organization to use in soliciting donations. The Committee determined, in relevant part, as follows:

Rule 3.7(a)(5) permits a Judicial Official to make recommendations to a public or private fund-granting organization or entity in connection with its programs and activities if the organization or entity is concerned with the law, the legal system or the administration of justice, however, Rule 3.7(a)(5) should be viewed as applying in the context of the Judicial Official serving on the Board of the fund-granting organization and the fund-granting organization (as opposed to the grant recipient) must be concerned with the law, the legal system or the administration of justice.

In [JE 2017-06](#), at issue was whether a Judicial Official may serve on a United Way committee that is responsible for (1) allocating funds to recipient organizations, or (2) governance and strategic planning (but not fundraising). Based on the facts presented, including that the United Way is a charitable or civic non-profit organization that is not concerned with the law, the legal system, or the administration of justice, and it is not frequently involved in litigation, the Committee unanimously determined that (1) a Judicial Official may not serve on a committee responsible for the allocation of funds, and (2) a Judicial Official may serve on the governance and strategic planning committee subject to the same seven conditions imposed in [JE 2012-28](#).

Based on the information provided, the Committee determined that the Judicial Official may not serve on the advisory committee of the fund-granting

organization because the organization is not concerned with the law, the legal system, or the administration of justice. Rule 3.7(a)(5) provides that a Judicial Official may make recommendations to a public or private fund-granting organization, but may only do so if the fund-granting organization is concerned with the law, the legal system, or the administration of justice.

VI. The meeting adjourned at 9:44 a.m.