

Committee on Judicial Ethics  
Teleconference  
Tuesday, April 22, 2014

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 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 9:36 a.m. Although publicly noticed, no members of the public were in attendance.
- II. The Committee members present approved the minutes of the April 7, 2014 meeting.
- III. The Committee discussed **Informal JE 2014-04** concerning whether a Judicial Nominee's law firm may remain in existence and retain its name on a bank account after the Nominee is confirmed solely for purposes of receiving payments for previously provided services.

A Judicial Nominee is a named partner in a small firm that is organized as a closely held professional corporation wherein the Nominee is the sole shareholder. Once the Nominee is confirmed, the firm will cease to practice law (the other attorneys will be joining other firms). The firm is owed money which is automatically paid by institutional clients on a monthly basis for work previously performed. Payments will continue for approximately one year and a lawyer other than the Nominee will receive and distribute the payments.

The Application section of the Code states, with respect to the time for compliance, as follows:

A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (Appointments to Fiduciary Positions) and 3.11 (Financial, Business, or Remunerative Activities) apply shall comply with those Rules as soon as reasonably possible, but in no event later than one year after the Code becomes applicable to the judge.

The Comment to the foregoing provision states as follows:

If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.

Rule 1.2 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 “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 3.10 states “Except as provided herein, a judge shall not practice law....”

Rule 3.11 states that a judge may hold and manage investments of the judge and family members but limits the circumstances under which a judge may serve as an officer, director, manager, general partner or advisor to a business entity, to a business closely held by the judge or members of the judge’s family or a business entity primarily engaged in investments of the financial resources of the judge or members of the judge’s family. A judge is further prohibited from engaging in the foregoing otherwise permissible activities if it will interfere with the proper performance of judicial duties, lead to frequent disqualifications, involve the judge in frequent transactions with lawyers or others likely to come before the court on which the judge serves, or result in a violation of other provisions of the Code.

Based upon the facts presented, including that the firm would cease to practice law and the only payments are automatic payments from institutional clients, and having considered opinions from New York, South Carolina and Florida,<sup>1</sup> the Committee unanimously determined that the

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<sup>1</sup> In rendering its opinion, the Committee considered the following advisory opinions: *New York Opinion 05-130(A)* (a new judge is not required to immediately dissolve the professional corporation constituting the judge’s law practice and the judge may remain a shareholder “solely for the purpose of winding up its affairs, including collecting fees”); *South Carolina Opinion No.*

firm name and bank account may remain in existence for a period of time not to exceed one year subject to the following conditions:

1. The Nominee's firm is not held out to the public as being in existence;
2. There is a written agreement as to how the funds that are received are to be distributed;
3. Clients are notified that the firm is dissolved but that payments are to continue to be made in the firm name; and
4. Payments are received only for work done prior to the Nominee's confirmation.

IV. The meeting adjourned at 9:49 a.m.

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13-1996 (a newly elected judge who was a sole shareholder of a professional association that formerly served as his law practice could manage the association until the end of the year to collect accounts receivable and facilitate the closing of the association); *Florida JEAC Opinion 2006-31* (a judge and the judge's former law partner may continue to maintain a partnership account after the judge assumes office for purposes of receiving fees due the partnership for work performed prior to the judge's election provided the firm is formally dissolved, maintenance of the account is solely for purposes of winding up partnership business, the account is closed within a reasonable time, and no professional services are provided after the judge assumes office); but see *Florida JEAC Opinion 2006-01* (a professional association should change its status or be dissolved prior to the date a newly appointed judge takes the bench; however, the professional association's operating account may remain open but should reflect the status of the new entity established before the judge takes the bench).