

Committee on Judicial Ethics
Teleconference
Thursday, June 15, 2017

Committee members present via teleconference: Judge Christine E. Keller (Chair), Judge Maureen D. Dennis (Vice Chair), Judge Robert B. Shapiro and Judge James T. Graham (Alternate). Staff present: Attorney Martin R. Libbin (Secretary), Attorney Viviana L. Livesay (Assistant Secretary) and Attorney Joseph J. Del Ciampo.

MINUTES

- I. Judge Keller called the meeting to order at 9:32 a.m. One member of the public joined the meeting at 9:38 a.m.
- II. The Committee members present approved the minutes of the May 18, 2016 regular meeting.
- III. The Committee ratified **Emergency Staff Opinion JE 2017-02**. The facts are as follows. A Judicial nominee is a member of a small law firm. Clients pursuant to the retainer agreement are clients of the firm, not of the Judicial nominee, although the Judicial nominee may have been the only attorney to have met with some of the clients and has a personal relationship with the clients. If confirmed, the nominee has inquired about the propriety of sending letters to clients advising them of his or her appointment to the bench and that they will continue to be represented by the nominee's (then Judge's) former law firm. In addition, the nominee has inquired if he or she can review files and leave notes regarding the status of the case for successor counsel.

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 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 1.16 (d) of the Rules of Professional Conduct states "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of the fee that has not

been earned. The lawyer may retain papers relating to the client to the extent permitted by other law. If the representation of the client is terminated either by the lawyer withdrawing from representation or by the client discharging the lawyer, the lawyer shall confirm the termination in writing to the client before or within a reasonable time after the termination of the representation.”

This inquiry was circulated to the Committee members and their input was solicited and received. In Cynthia Gray’s paper, *Ethical Issues for New Judges* (rev. 2003), she notes at page 7 the following:

The ethical responsibilities owed to a client when an attorney leaves the practice of law to become a judge are no different than those owed when an attorney ends representation of a client for any other reason and are covered by each state’s rules of professional responsibility. Thus, a new judge should consult her state’s rules and law on the issue. See also *ABA/BNA Lawyers Manual on Professional Conduct*, 91:801, ‘Duties at End of Representation.’ Rule 1.16(d) of the ABA Model Rules of Professional Conduct requires a lawyer when ending representation to “take steps to the extent reasonably practicable to protect a client’s interests.’ Specific steps a new judge should take include:

- Promptly contacting all clients regarding the change in professional status to give reasonable notice and allow time for employment of other counsel;
- Discussing with the client options available for obtaining other counsel if the matter cannot be concluded prior to the attorney becoming a judge; and
- Assisting the client in locating counsel with the necessary expertise.

The paper further notes that various jurisdictions have stated that a judge could provide information but not advice on trial strategy to successor counsel, and the advisory committee for federal judges has allowed a judge to respond to questions from successor counsel as to historical facts not readily apparent from the file, the factual details within the judge’s peculiar knowledge, and similar matters of clarification.

Based upon the foregoing, the Judicial nominee was advised that he or she (1) can provide a letter to clients that as a result of his or her appointment to the bench, he or she will no longer be representing the client, but that the law firm will continue to represent the client, and (2) the Judicial Official can respond to questions from successor counsel and provide information, but not legal advice (including but not limited to trial strategy), concerning historical facts not readily apparent from the file, factual details that are within the Judicial Official’s peculiar knowledge and similar matters of clarification.

- IV. The Committee ratified **Emergency Staff Opinion JE 2017-04** concerning whether a Judicial Official may meet with a U.S. Senator from another state at a

private residence to discuss issues of mutual interest that are related to the law, the legal system or the administration of justice.

Rule 3.2 states that a judge “shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or legislative body or official, except:

- (1) in connection with matters concerning the law, the legal system, or the administration of justice;
- (2) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge’s judicial duties; or
- (3) when the judge is acting in a manner involving the judge’s legal or economic interests or when the judge is acting in a fiduciary capacity.

Comment (2) to Rule 3.2 states “[i]n appearing before governmental bodies or consulting with governmental officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others’ interests; Rule 2.10, governing public comment on pending and impending matters; and Rule 3.1 (3), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.”

Rule 4.1(c) states that “a judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.”

This inquiry was circulated to the Committee members and their input was solicited and received. Contact between judges and a legislative/executive body or official may be made only in the narrowest of circumstances. Rule 3.2 of the Code of Judicial Conduct sets forth the three limited circumstances: a judge may consult with government officials (1) in connection with matters concerning the law, the legal system or the administration of justice; (2) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge’s judicial duties; or (3) when the judge is acting in a manner involving the judge’s legal or economic interests or when the judge is acting in a fiduciary capacity.

In 2015, this committee considered whether a judge may appear at a public hearing before an executive body in a matter involving the judge’s legal or economic interest. The issue raised in [JE 2015-05](#) concerned whether a JO may speak at a town hall meeting to discuss the future of an old, closed school in the town’s center. The members unanimously concluded that the JO may attend and speak at the town meeting to discuss the future uses of the school, subject to two conditions: (1) the JO must state that he/she is speaking solely in his or her capacity as a resident/private citizen and travel sports coach and (2) the JO shall

otherwise exercise caution to avoid using the prestige of judicial office in any way.

In [Massachusetts CJE Opinion 2003-6](#), the Massachusetts committee considered the propriety of communicating with the Executive and Legislative branches regarding proposed closures of several courthouses. The committee found the proposed activity to be permissible under the Code because it was a matter that concerned “the law, the legal system, and the administration of justice”, but cautioned the judge to remember his judicial role and to formulate and express his views with his primary role in the system in mind. The judge was also advised to avoid partisan politics.

In April 2017, the Colorado Judicial Ethics Advisory Board determined that contact between a judge and his/her federal congressional representatives to express approval or dissatisfaction with federal legislation or cabinet appointments violated the Code of Judicial Conduct. In [CJEAB Opinion 2017-01](#), the Colorado advisory board determined that the proposed communication fell outside the narrow scope of Rule 3.2 because it implicated the judge’s personal opinion and would very likely amount to an impropriety or give the appearance of impropriety, undermine the judge’s independence, integrity, or impartiality and implicate the Code’s proscription against political activity. The board also noted that even when such contact falls within the narrow scope of Rule 3.2, judges still remain subject to the Code’s other provisions, including impropriety, judicial independence, integrity and impartiality.

At issue in [Florida JEAC Opinion 2010-20](#) was whether a judicial candidate may attend a town hall meeting, hosted by an elected state representative, put on for the limited purpose of discussing the outcome of the legislative session. The committee concluded that attending a town hall meeting that is open to the public for the specific purpose of discussing the outcome of the legislative session was permissible under the Code. The committee cautioned, however, that any meeting conducted by a single elected official, who may be running for election, can easily become a political event based on what occurs at the meeting. The true nature and purpose of the meeting will not necessarily be known until the meeting occurs and may change at any point.

In conclusion, the Committee agreed that the Judicial Official may meet with a U.S. Senator from another state at a private residence to discuss issues of mutual interest that are related to the law, the legal system or the administration of justice, subject to the following:

- 1) The Judicial Official must be mindful that he/she remains subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others’ interests; Rule 2.10, governing public comment on pending and impending matters; and Rule 3.1 (3), prohibiting judges from engaging in extrajudicial activities that

would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. (Rule 3.2, cmt. (2)).

- 2) The focus of the discussion should be centered on ways to improve the law, the legal system or the administration of justice. The Judicial Official shall not act as a political consultant.
 - 3) The meeting should remain private and cannot be used by the Senator for political purposes.
 - 4) Any meeting conducted by a single elected official, who may be running for election, can easily become a political event based on what occurs at the meeting. Caution is emphasized because the nature, purpose and spirit of the meeting may change at any point.
- V. The Committee ratified **Emergency Staff Opinion JE 2017-05**. Several Judicial Officials have inquired about the name of their former law firm. In particular, if a Judicial Official's former law firm name is A, B and C, where "C" is the name of the Judicial Official, must the Judicial Official have his or her name removed from his or her former law firm's name once the Judicial Official is sworn into office? If so, is there a time period during which this must be accomplished? Do the answers to the prior questions depend upon whether the former law firm is a partnership, LLC or PC?

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 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 7.5 (c) of the Rules of Professional Conduct states "The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm."

This inquiry was circulated to the Committee members and their input was solicited and received. In Cynthia Gray's paper, *Ethical Issues for New Judges* (rev. 2003), she notes at pages 11 – 12, the following:

Except for payment of fees or for the judge's interest in the practice, "[u]pon assuming judicial office, a judge is required to sever all ties with the judge's former firm." *Michigan Advisory Opinion JI-89* (1994).

As part of that process, a new judge must ensure that her name is deleted from the firm name and not used in professional notices sent out by the firm. See *Kentucky Advisory Opinion JE-41* (1982); *Louisiana Advisory Opinion 155* (1999); *Michigan Advisory Opinion JI-89* (1994); *New York Advisory Opinion 89-136*. For example, the Massachusetts judicial ethics committee stated that a judge has an obligation to notify members of her former law firm that she objects to the use of her name and title in a brochure that the firm is preparing for distribution to the firm's clients and prospective clients. *Massachusetts Advisory Opinion 90-1*.

That change to the firm name is required by the Canon 2B provision that a judge "shall not lend the prestige of office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge." The removal of the judge's name from a law firm name is also required by Rule 7.5 of the model rules of professional responsibility, which states that the "name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm."

However, if a judge's former firm refuses to remove the judge's name from the firm name, the judge is not required to take action to force it to do so. *Massachusetts Advisory Opinion 03-9* (judge whose former firm has refused requests to remove the judge's surname from the firm name may file a complaint with the board of bar overseers but is not required to do so); *U.S. Compendium of Advisory Opinions § 2.7(g)* (2001) (judge should not permit a former law firm to continue to use the judge's name but need not take steps to compel an immediate change if the firm plans to remove the judge's name that year).

Based upon the foregoing, the Judicial Officials were advised that they should advise their former law firms that their name needs to be removed from the law firm name and that the removal of the Judicial Official's name should be accomplished as soon as reasonably possible. The foregoing is true regardless of whether the firm is a partnership, LLC or PC.

- VI. The Committee discussed **Informal JE 2017-03** concerning whether a Judicial Official may participate as an Honoree at the Connecticut Women's Hall of Fame annual induction ceremony and whether the Judicial Official may participate in media interviews related to her selection as Honoree. Three individuals will be inducted and approximately 10 individuals will be recognized as Honorees.

While the induction ceremony is a fundraiser, the program is designed to recognize the contributions of the women who are Inductees and Honorees.

The mission of the Connecticut Women's Hall of Fame is to "Honor publicly the achievements of Connecticut women, Preserve their stories, Educate the public and Inspire the continued achievement of women and girls." Each year there is a theme for the individuals who are inducted or recognized as an honoree. This year's theme is "Heroic Women: Honoring those who Protect & Serve". This year's Inductees are Captain Kristen Griest, the first female infantry officer in the U.S. Army and one of the first two women to graduate from Army Ranger School; Major Regina Rush-Kittle, a military and law enforcement trailblazer and the highest ranking African American woman to serve in the Connecticut State Police; and Colonel Ruth A. Lucas, the first African American woman to attain the rank of Colonel in the U.S. Air Force and an advocate for improved educational opportunities for service personnel. According to the Judicial Official and the Chair of the Board of Trustees of the Connecticut Women's Hall of Fame, the Judicial Official primarily would be recognized for her experience as a prosecutor, but also for her services as a soldier (albeit that was only for a limited number of years) and her current status as a Judicial Official. Among the other Honorees for this year is Deirdre M. Daly, U.S. Attorney for the District of Connecticut. Discussion of the Honorees at the Induction Ceremony will take place as time permits.

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 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 2.10 states that a judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court or make any non-public statement that might substantially interfere with a fair trial. It further provides that a judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

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 (1) will interfere with the proper performance of judicial duties, (2) lead to frequent disqualification, (3) appear to a reasonable person to undermine the judge's

independence, integrity or impartiality, (4) appear to a reasonable person to be coercive, or (5) make use of court premises, staff or resources except for incidental use or for activities that concern the law, the legal system or the administration of justice, or the use is permitted by law.

Rule 3.7 (a) states that subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations concerned with the law, the legal system or the administration of justice, as well as 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 (1) to this Rule notes that the activities permitted by subsection (a) “generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions and other not-for-profit organizations, including law related, charitable, and other organizations.” Comment (2) to this Rule notes that “Even for law related organizations, a judge should consider whether ... 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.”

The issue of appearing at or receiving an award at a fund-raising event has previously been considered by this Committee. Some of those opinions are discussed below.

In [JE 2010-30](#), this Committee considered whether a Judicial Official could be (1) honored at a fund-raising event hosted by a law-related organization that provides legal services, and (2) featured in advance publicity. The Committee concluded that the Judicial Official may be honored at the event because it was one that “concerns the law, the legal system, or the administration of justice” under Rule 3.7 (a)(4). With respect to publicity, this Committee advised that special care must be taken to ensure that the Judicial Official’s name is not being used to encourage law firm participation and that no appearance is created that any of the donors or the organization is in a special position to influence the Judicial Official.

In [JE 2012-15](#), this Committee determined that a Judicial Official who had served as a member of a task force created to study issues concerning the administration of criminal justice could attend and be acknowledged at a fund-raising event hosted by a nonprofit law-related organization.

In [JE 2012-22](#), at issue was whether a Judicial Official, prior to his or her resignation from the bench, could authorize, assist and agree to be the guest of

honor at a fund-raising event that would benefit an organization that concerns the law, the legal system or the administration of justice. Based upon the facts presented, including that the “retirement” event involved fund-raising for a non-profit organization concerned with the law, the legal system or the administration of justice, that the Judicial Official would not know in advance of the event who had purchased tickets, the event would take place after the Judicial Official’s retirement, and that the Judicial Official would not preside over any contested matters once the tickets were offered for sale, the Committee unanimously determined that the Judicial Official could agree to be the guest of honor at the “retirement” fund-raising event. The Committee further determined that the proposed event would not create an appearance of impropriety in violation of Rule 1.2 and also would not constitute an attempt to use the prestige of office to advance the interests of others in violation of Rule 1.3.

While the foregoing opinions concern appearing and being a guest of honor at a law-related organization’s fund-raising event, it is important to note that the new Code of Judicial Conduct, which was adopted effective January 1, 2011, provides in Rule 3.7 that subject to the requirements of Rule 3.1, a judge may participate in activities (1) sponsored by organizations or governmental entities concerned with the law, the legal system or the administration of justice, and (2) those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations which are not conducted for profit. Rule 3.7(a) states that Judicial

Officials can participate in such activities “including, but not limited to, the following activities” and then lists 6 types of activities. Subdivision (4), as noted above, concerns appearing or speaking at, receiving an award, being featured on the program of and permitting his or her title to be used in connection with the event “of such an organization or entity, but if the event serves a fund-raising purpose, the judge may only participate only if the event concerns the law, the legal system, or the administration of justice”.

Applying the fund-raising purpose of an event to non-law related entities is consistent with the foregoing plain language of the Code as well as the opinion expressed by Cynthia Gray in her article “Nexuses and tangents: The law, the legal system, or the administration of justice”, which appeared in Judicial Conduct Reporter, Vol. 37, No. 1, Spring 2015. (This is a change from the opinion Ms. Gray initially took when the model code was first adopted.) In particular, at page 11, she stated the following:

In a new exception created in the 2007 model code, Rule 3.7(A)(4) provides that a judge may appear, speak, or receive an award at, be featured on the program of, and permit his or her title to be used in connection with a fund-raising event for a non-profit organization “only if the event concerns the law, the legal system, or the administration of justice.” The Florida version of the rule provides that “the law, the legal system, or the administration of justice”

applies to both the organization sponsoring the fund-raising event and the purpose for which the funds are being raised.

In this case, the sponsoring organization is a 501(c)(3) nonprofit civic/educational organization and therefore qualifies as an organization within the meaning of Rule 3.7. Therefore, under our Code of Judicial Conduct, the question presented is whether the “event” is one that “concerns the law, the legal system, or the administration of justice”. Unlike Florida, Connecticut does not require that the purpose for which the funds are being raised also relate to “the law, the legal system, or the administration of justice”.

In [JE 2011-02](#), this Committee, by a vote of 3 – 1, determined that in order for a governmental committee, board, commission or other governmental position to be deemed concerned with the law, the legal system, or the administration of justice for purposes of Rule 3.4, “there must be a direct nexus between what a governmental commission does and how the court system meets its statutory and constitutional responsibilities – in other words, how the courts go about their business.” In a footnote, the Committee specifically noted that it was not deciding if the same interpretation of the phrase “the law, the legal system, or the administration of justice” would apply in interpreting Rule 3.2, which concerns appearances before governmental bodies and consultation with government offices. Similarly, the Committee has not formally adopted the definition used in Rule 3.4 for Rule 3.7, although it is construing the same phrase.

In [JE 2016-13](#), this Committee determined that a Judicial Official and his or her spouse who volunteered to assist a non-profit organization that was not related to the law, the legal system or the administration of justice could be listed in a fund-raising program journal, in which there were paid listings, subject to the following conditions: (1) the names appeared under a heading for volunteers; (2) the Judicial Official’s title was not listed unless the title of other volunteers was included; and (3) the Judicial Official could not have his or her name included as part of any paid listing. The rationale for that decision was that being listed in the program journal was similar to being listed on an organization’s letterhead that was used for fundraising purposes, which is specifically permitted in Comment (4) to Rule 3.7 (“Identification of a judge’s position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge’s title or judicial office if comparable designations are used for other persons.”)

In [JE 2016-15](#), this Committee determined that subject to the following conditions a Judicial Official could be a guest of honor and speaker at a municipal historical society’s fundraiser where the subject of the program and the Judicial Official’s comments were about the evolution of the law, the courthouses in the municipality, the municipality as a seat of judicial power, and the role of the judicial process: (1) the Judicial Official not discuss pending or impending cases

in any court and not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court or make any non-public statement that might substantially interfere with a fair trial or hearing; (2) the Judicial Official did not personally believe that attendance and participation as a guest of honor would create an appearance of impropriety or appear to a reasonable person to be coercive; (3) the Judicial Official retained authority to review any press release or invitation to make sure that there was no attempt to use the prestige of judicial office to advance the interests of the organization, although the Judicial Official was permitted to be featured on the program and to allow his or her name and title to be used in connection with the event; and (4) if the organization appears before the Judicial Official as a party within a reasonable period of time following the event, the Judicial Official should disclose the fact that he or she attended the fund-raising event and was a guest of honor.

The question presented by this inquiry is whether the recognition of the Judicial Official for her role as one who “protects and serves” is done so as part of a program that concerns the law, the legal system or the administration of justice. The three Inductees are clearly being honored for their military and law enforcement service. While the Judicial Official’s service as a prosecutor and Judicial Official can be viewed as relating to the administration of justice, she also is being recognized for her military service. However, the question is not whether the Judicial Official warrants the honor, but rather whether the program at which the honor would be given is one that concerns the law, the legal system or the administration of justice.

Based upon the facts provided, including that the event at which the Judicial Official would be recognized is designed for “Heroic Women: Honoring those who Protect & Serve”, and the major focus is on the three Inductees for their military and law enforcement service, the Committee unanimously determined that the event is not one that concerns the law, the legal system or the administration of justice within the meaning of Rule 3.7. The Committee noted that the Judicial Official could be an Honoree at a future program, based upon her service as a prosecutor and Judicial Official, if one of the major program themes concerns the law, the legal system or the administration of justice.

VII. The meeting adjourned at 10:45 a.m.