

Committee on Judicial Ethics  
Teleconference  
Thursday, August 17, 2017

Committee members present via teleconference: Judge Maureen D. Dennis (Chair), Judge Christine E. Keller, Judge Robert B. Shapiro, Professor Sarah F. Russell and Judge James T. Graham (Alternate). Staff present: Attorney Adam P. Mauriello (Assistant Secretary).

**MINUTES**

- I. Judge Dennis called the meeting to order at 9:32 a.m. Although publicly noticed, no members of the public were present.
- II. Judges Dennis, Keller, Shapiro and Graham and Professor Russell approved the minutes of the July 20, 2017 regular meeting.
- III. The Committee discussed **Informal JE 2017-10**, concerning whether a Judicial Official is required to recuse himself/herself from matters involving an attorney against whom a complaint was filed under the following factual scenario: A judge was sitting as an observer (“observing judge”) during a pretrial being conducted by a second judge (“presiding judge”) in the presiding judge’s chambers. During the pretrial, an attorney for one of the parties exhibited conduct that called into question the attorney’s mental fitness to practice law. Shortly before and after the pretrial, the presiding judge shared with the observing judge written communications and pleadings filed by the attorney in the days before the pretrial that raised similar concerns regarding the attorney’s mental fitness. Thereafter, the observing judge and the presiding judge discussed the attorney’s conduct, and the presiding judge advised the observing judge that he/she in fact filed a complaint regarding the attorney. The observing judge suspects, but does not know, that he/she is identified in the complaint as a witness.

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 2.14 of the Code states that “[a] judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol or by a mental, emotional, or physical condition, shall take appropriate action, which may include notifying appropriate judicial authorities or a confidential referral to a lawyer or judicial assistance program.”

The Committee considered a similar ethical issue in [JE 2015-01](#) concerning the nature of a Judicial Official's obligation when he/she receives information regarding possible attorney misconduct. In that opinion, the Committee concluded that the lawyer's conduct should be reported to the appropriate authority pursuant to subsection (d) of Rule 2.15. Because there was a substantial likelihood that the lawyer committed a violation of the Rule of Professional Conduct that called into question the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, the Committee determined that the only "appropriate action" under subsection (d) was to report the matter to Statewide Grievance Committee for further investigation. Once the Judicial Official reports the attorney, the JO must disqualify him/herself from all cases in which the attorney appears either as a party or an attorney, both during the pendency of the disciplinary matter, and for a period of two years after the disciplinary matter is fully resolved. Remittal is not available unless the attorney waives his/her right to confidentiality both during the disciplinary proceeding and after it is resolved in his/her favor or unless the grievance committee issues a public disciplinary decision. Although the present inquiry involves Rule 2.14 rather than Rule 2.15, the Committee determined that its opinion in JE 2015-01 regarding disqualification applies equally to this situation.

Based on the facts presented, including that the observing judge was a witness to the attorney's behavior, the Committee determined that the observing judge has a "reasonable belief" under Rule 2.14 that the attorney may be unfit to practice law and, as a result, should disqualify himself/herself from all cases in which the attorney appears either as a party or an attorney, both during the pendency of the disciplinary matter, and for a period of two years after the disciplinary matter is fully resolved. Remittal is not available unless the attorney waives his/her right to confidentiality both during the disciplinary proceeding and after it is resolved in his/her favor or unless a grievance panel finds probable cause that the attorney is guilty of misconduct.

IV. The meeting adjourned at 9:56 a.m.