

Committee on Judicial Ethics
Teleconference
Friday, September 21, 2012

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Edward R. Karazin, Vice Chair, Professor Jeffrey A. Meyer, Judge Maureen D. Dennis and Judge Christine E. Keller. Staff present: Attorney Martin R. Libbin, Secretary.

MINUTES

- I. With the above noted Committee members present, Justice Schaller called the meeting to order at 9:33 a.m. Although publicly noticed, no members of the public were in attendance.
- II. The Committee members present unanimously approved the Minutes of the August 31, 2012 meeting.
- III. The Committee discussed Informal JE 2012-26 concerning whether a Judicial Official may provide assistance to a local high school's mock trial team. The Judicial Official has been asked to volunteer his/her time and expertise to assist a local high school mock trial team. It is anticipated that meetings with the mock trial team will not take place during the Judicial Official's normal work hours.

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 2.10(a) of the Code provides that "[a] judge shall not make any public statement that might reasonably be expected to affect the outcome or to impair the fairness of a matter pending or impending in any court or make any nonpublic statement that might substantially interfere with a fair trial or hearing." Rule 2.10(d) recognizes certain exceptions to this prohibition, including an exception for a judge's public statement to "explain court procedures."

Rule 3.1 of the Code provides that subject to certain conditions a judge "may engage in extrajudicial activities except as prohibited by law." The rule's commentary encourages judges to participate in appropriate extrajudicial activities and observes that "[j]udges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or

participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law.” Rule 3.1, cmt. (1).

Although Rule 2.10 restricts a judge from commenting publicly on cases pending or impending in any court, the Committee holds the opinion that a judge who is engaged in teaching is not precluded in a classroom setting from identifying and describing pending or impending cases that are relevant to the subject matter under discussion because statements in this setting could not reasonably be expected to affect or substantially interfere with the outcome of any proceeding under Rule 2.10(a). However, a judge should refrain from making unnecessarily controversial statements about such pending cases.

Based upon the information provided, the Committee determined that the Judicial Official may provide assistance to a high school mock trial team subject to the following conditions:

- (1) The Judicial Official’s participation does not interfere with the proper performance of the Judicial Official’s duties nor create grounds upon which the Judicial Official may have to recuse him/herself;
- (2) The Judicial Official does not give opinions that would cast doubt on the Judicial Official’s impartiality or indicate that the Judicial Official has a predisposition with respect to a particular case; and
- (3) The Judicial Official should refrain from inappropriate comment (as indicated above) about pending or impending matters.

- IV. The Committee discussed Informal JE 2012-27 concerning whether a Judicial Official may provide a letter of recommendation directly to the Office of the Chief Public Defender for an attorney who is applying for a supervisory public defender position.

The Judicial Official knows the attorney and has personal knowledge of his/her qualifications. The attorney does not currently appear before the Judicial Official, nor does the Judicial Official anticipate that the appointment of the attorney to the position sought would result in the attorney appearing before the Judicial Official in the future. The Judicial Official and the attorney are not relatives.

Rule 1.2 of the Code 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 of the Code 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." The Commentary to Rule 1.3 states, in relevant part, as follows:

(2) A judge may provide a reference or recommendation for an individual based on the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if the use of the letterhead would not reasonably be perceived as an attempt to exert pressure by reason of judicial office.

Although the recommendation is in connection with government employment, the Committee holds the opinion that the proposed activity does not involve inappropriate political activity under Rule 4.1. Therefore, based upon the information provided and consistent with the Committee's prior opinions, the Committee determined that the Judicial Official may provide a letter of recommendation to the Office of the Chief Public Defender, subject to the following conditions:

(1) The applicant is not a relative within the meaning of the Code or General Statutes § 51-39a;

(2) The recommendation should be based on the Judicial Official's personal knowledge of the applicant's qualifications and be specific to the position sought (see Rule 1.3 comment 2; [JE 2008-26](#));

(3) If the recommendation is furnished in writing on official letterhead, the Judicial Official should indicate that the recommendation constitutes the Judicial Official's personal opinion of the applicant's qualifications (see Rule 1.3 comment 2); and

(4) If anticipated circumstances change such that the applicant appears before the Judicial Official within a reasonable period of time following the issuance of the recommendation, the Judicial Official should consider whether disclosure or disqualification may be warranted in accordance with Rule 2.11.

- V. The Committee discussed the possibility of establishing a regular meeting schedule, but decided to continue meeting on an ad hoc basis.
- VI. Judge Keller exited the teleconference at 10:04 a.m.
- VII. The meeting adjourned at 10:06 a.m.