

Committee on Judicial Ethics
Teleconference
Thursday, October 16, 2014

Members present via teleconference: Judge Christine E. Keller, Chair, Judge Maureen D. Dennis, Vice Chair, Judge Barbara M. Quinn, Professor Sarah F. Russell and Judge Angela C. Robinson. Staff present Attorney Martin R. Libbin, Secretary.

MINUTES

- I. With the above noted Committee members present, Judge Keller 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 approved the minutes of the September 18, 2014 meeting.
- III. The Committee discussed **Informal JE 2014-18** concerning whether a Judicial Official may serve as an officer and member of the board of directors of a country club.

A Judicial Official is a member of a private, not-for-profit country club and has inquired about serving as an officer (Vice President and then President). The duties of the club's President and Vice President are the same as those normally associated with those offices. The club has been a party to two lawsuits in the past seven years, neither of which is still pending. The club will be conducting a capital campaign among its members in order to raise funds to perform renovations or further development of the club's property. The Judicial Official would not be a member of the fundraising committee, but as an officer and board member, would be involved in voting on expenditures. The board also votes on membership applications. Prospective members must be sponsored by a current member. If a prospective member does not know a current member, the club's office will place the prospective member in contact with a current member willing to serve as a sponsor. The club has no restrictions on membership (i.e. no restrictions based upon religion, national origin, race, sex, gender identity or expression, sexual orientation, etc.) and bases membership decisions on the merit of the applicant.

Rule 1.2 of Code 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 3.1 of the Code concerns extrajudicial activities and sets forth general limitations on such activities, such as not using court premises, staff or resources, except for incidental use or for activities that concern the law, the legal system, or the administration of justice unless otherwise permitted by law, and not participating in activities that (1) 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, or (4) appear to a reasonable person to be coercive.

Rule 3.7 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 civic organizations not conducted for profit including, but not limited to "(a)(1) participating in the management and investment of the organization's or entity's funds; ... (a)(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 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." Comment (4) to Rule 3.7 states that "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."

Rule 3.10 of the Code prohibits a Judicial Official from practicing law, with exceptions for self-representation and, without compensation, giving legal advice to and drafting or reviewing documents for a member of the judge's family.

Rule 3.11 of the Code prohibits a Judicial Official from serving as an officer, director, manager, general partner or advisor of any business entity except for a business closely held by the Judicial Official or members or his or her family, or a business entity primarily engaged in investment of the financial resources of the Judicial Official or members of his or her family.

The Committee unanimously determined that the country club is a civic or fraternal organization and not a business entity, and that the Judicial

Official may serve as an officer and member of the board of directors of a country club ("Board"), subject to the following conditions:

1. The Judicial Official should regularly reexamine the activities of the Board to determine if it is proper to continue his or her relationship with the Board. In addition, the Judicial Official should regularly monitor whether the country club "will frequently be engaged in adversary proceedings in the court of which the Judicial Official is a member or in any court subject to the appellate jurisdiction of the court of which the Judicial Official is a member" and, if so, terminate his or her office and membership on the Board. Rules 1.2 and 3.7.
2. The Judicial Official should resign from office and the Board if such service would require the Judicial Official to be involved in frequent transactions with lawyers or persons likely to come before the court on which he or she serves. Rules 3.1 & 3.7(a)(6).
3. The Judicial Official should 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 non-public statement that might substantially interfere with a fair trial or hearing. Rule 2.10(a).
4. The Judicial Official should not use Judicial Branch resources for activities that concern the country club (except for incidental use). Rule 3.1(5).
5. The Judicial Official should not provide legal advice or otherwise engage in the practice of law. This includes, but is not limited to, the following activities: approving or discussing legal action or defense plans, selecting or dismissing attorneys, and drafting bylaws or reviewing them for legal sufficiency. Rule 3.10.
6. The Judicial Official may not solicit funds other than from members of the Judicial Official's family or from judges over whom the inquiring Judicial Official does not exercise supervisory or appellate jurisdiction and the Judicial Official may not solicit membership or sponsor prospective members or vote on membership applications of lawyers who frequently appear in front of the Judicial Official or judges over whom the Judicial Official exercises supervisory or appellate jurisdiction; however, the Judicial Official may assist the country club in planning related to fund-raising and participate in the management and investment of the club's funds and may have his or her name on letterhead used to solicit funds if other officers names and positions are similarly listed. Rule 3.7 (a) (1), (2) and (3) and Comment (4).

In reaching its decision, the Committee considered New York Judicial Ethics Advisory Opinion 12-177 and its prior opinions in [JE 2013-01](#) and [JE 2014-17](#) which addressed whether a Judicial Official could serve on the board of an out-of-state homeowners association and a Connecticut condominium association, respectively. In each opinion, the Committee concluded that the Judicial Official could serve on the Board subject to various restrictions.

- IV. The Committee discussed **Informal JE 2014-19**. The facts are as follows: A close family friend of a Judicial Official owns a vacation home in a condominium complex. The complex has some vacant units that it makes available, on a rental basis, to unit owners for their family and guests (hereinafter, "rental unit"). The Judicial Official and his/her family have been invited to spend a week at the condominium in one of the rental units at the same time as the family friend. The Judicial Official plans to reimburse the friend for the full rental cost of the rental unit. The friend may have contracts with the State of Connecticut, but to the best of the Judicial Official's knowledge, the friend does not have any contracts with the Judicial Branch. The Judicial Official indicated that if the friend or his/her business appeared before the Judicial Official, the Judicial Official would recuse himself or herself. May a Judicial Official accept an offer to stay in rental unit if the Judicial Official pays the cost of the rental?

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 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 2.11 of the Code states a judge "shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned...."

Subsections (a) and (b) of Rule 3.13 provide the following:

- (a) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.
- (b) Unless otherwise prohibited by law, or by subsection (a), a judge may accept the following without publicly reporting such acceptance:

...(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11; (3) ordinary social hospitality...

Based upon the facts presented, including that (a) the offer is from a close family friend, (b) the Judicial Official plans to recuse himself or herself if the friend or his/her business appears before him/her, and (c) the Judicial Official plans to reimburse the friend for the cost of the rental, the Committee unanimously determined that the use of the rental unit should be viewed as “ordinary social hospitality.”¹ As such, the Judicial Official may accept the offer subject to the following conditions:

The recusals are infrequent and do not interfere with the orderly processing of the court’s business; and

The proposed hospitality is consistent with the social hospitality that the Judicial Official and his/her family have extended to their friends.

Furthermore, as noted in Rule 3.13, the Judicial Official need not report the receipt of ordinary social hospitality. In reaching its decision, the Committee took into account its prior opinion in [JE 2009-04](#) (Judicial Official and his/her family may accept an invitation to spend several days with another couple, with whom they are close family friends, both of whom are lawyers, at the friends’ vacation home, subject to various conditions. The Committee determined that two families vacationing together at one of the family’s home is part of ordinary social hospitality).

¹ Generally, “ordinary social hospitality” is defined as that type of social event or other gift which is so common among people in the judge’s community that no reasonable person would believe that the donor was intending to or would obtain any advantage. The Committee considered the following relevant considerations identified in the Cynthia Gray publication entitled “A Judge’s Attendance at Social Events, Bar Association Functions, Civic and Charitable Functions, and Political Gatherings”:

1. The cost of the event or gift, whether the benefits are greater in value than that which the judge customarily provides his/her own guests;
2. Whether the benefits conferred are greater in value than that traditionally furnished at similar events sponsored by bar associations or similar groups;
3. Whether the benefits are greater in value than that which the judge customarily provides his/her own guests;
4. Whether the benefits conferred are usually exchanged only between friends or relatives;
5. Whether there is a history or expectation of reciprocal social hospitality between the judge and the donor;
6. Whether the event is a traditional occasion for social hospitality (such as a holiday party or the opening of an office), and
7. Whether the benefits received must be reported to any governmental entity.

V. New Business

- A. Discussion of agenda content: The Committee members agreed that a brief summary of issues to be considered should be included on future meeting agendas.
- B. Discussion about dissemination of opinions to judges: The Committee discussed the possibility of sending judges a monthly email with links to recent ethics opinions; creating information on retirement issues and including ethics opinions in the CJI packets.

VI. The meeting adjourned at 9:50 a.m.