

Committee on Judicial Ethics  
Teleconference  
Thursday, January 12, 2012

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Edward R. Karazin, Jr., Vice Chair, Professor Jeffrey A. Meyer, Judge Maureen D. Dennis and Judge Thomas J. Corradino, Alternate. Staff present: Attorney Martin R. Libbin, Secretary and Attorney Viviana L. Livesay, Assistant Secretary.

**MINUTES**

- I. With the above noted members present, Justice Schaller called the meeting to order at 9:31 a.m. Although publicly noticed, no members of the public attended.
- II. The Committee unanimously approved the Minutes of the December 16, 2011 meeting.
- III. The Committee discussed Judicial Ethics Informal 2012-01. The facts are as follows: The former partners of a lawyer who is retiring from the practice of law after a long and distinguished career are hosting a retirement dinner in the lawyer's honor. Although the inquiring Judicial Official has known the retiring lawyer for many years, they do not socialize. The retiring lawyer used to appear regularly, and the former partners still appear regularly, before the Judicial Official. Everyone who attends will be a guest of the former partners, who are paying for the entire event. Guests will include family members and friends of the retiring lawyer, plus lawyers who practice in various areas of the law and some judges. May the inquiring Judicial Official attend the retirement dinner?

Based on the information provided, four of the five Committee members concluded that the Judicial Official should not attend the retirement dinner because attendance is likely to create an appearance of impropriety in violation of Rule 1.2. In reaching its decision, the Committee majority took into account its prior opinion in [JE 2008-16](#), and the proscription in Rule 2.4 against permitting external influences on judicial conduct or judgment, as well as the following factors: (1) the event is by invitation only and not open to members of the legal community at large, (2) the dinner will be paid for and hosted by the former partners of the retiring lawyer, who regularly appear before the Judicial Official, (3) guests include family and friends of the retiring lawyer, lawyers who practice in various areas of the law, and a limited number of judges, (4) the Judicial Official does not have a close personal relationship with the retiring lawyer, and (5) it is likely that guests attending the dinner may have cases pending before the invited judicial officials, thus raising the likelihood of future disclosure and disqualification issues.

One of the Committee members dissented from the view of the majority. The dissenting Committee member believes that there is a longstanding and salutary custom and practice of honoring attorneys upon their retirement from decades of legal practice and that these events traditionally and properly include judges before whom a retiring attorney has previously practiced. In the dissenting member's view, a judge's attendance at a retirement dinner to honor an attorney's "long and distinguished" career is neither improper nor does it create an appearance of impropriety in violation of Rule 1.2.

The dissenting member does not agree with the majority's conclusion that a violation of Rule 1.2 occurs when a judge's conduct "*is likely to create an appearance of impropriety*" (emphasis added). Rule 1.2 instructs judges to "avoid impropriety and the appearance of impropriety," and it further states that "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" (emphasis added). In the dissenting member's view, the appropriate inquiry under Rule 1.2 is whether proposed conduct *would* create an appearance of impropriety, not whether it *is likely to do so*.

As to the law firm's sponsorship of the event, the dissenting member concludes that a judge's receipt of a meal in the context of an event to honor an attorney's long and distinguished career would not appear to a reasonable person to undermine a judge's independence, integrity or impartiality in violation of Rule 3.13(a). The Judicial Official in this instance is not receiving any benefit or treatment that is different from any other guest (including lawyers and non-lawyers) at the retirement dinner. In the dissenting member's view, the Judicial Official's attendance without charge should not be prohibited but instead should be subject to possible reporting in accordance with Rules 3.13(c)(2) and 3.15.

As to the majority's concern about the presence of "guests attending the dinner [who] may have cases pending before the invited judicial officials," the dissenting member believes that the same holds true for any number of professional and social events that judges routinely attend. In the dissenting member's view, the presence of such guests does not raise "disclosure and disqualification issues" as the majority contends.

In the dissenting member's view, there is no indication that the retirement dinner has been organized for any ulterior purpose to influence judicial officials. Accordingly, the dissenting member does not agree with the majority that the Judicial Official's attendance would amount to "permitting external influences on judicial conduct or judgment" in violation of Rule 2.4.

- IV. The Committee considered Judicial Ethics Informal 2012-02. The facts are as follows: At a time subsequent to his or her appointment, a Judicial Official referred a close personal friend to an attorney for representation concerning a case. The attorney recently settled the client's case and asked the Judicial Official if he or she would accept a referral fee. May the Judicial Official accept a referral fee?

Based upon the mandate in Rule 1.2 that a Judicial Official should act at all times in a manner that promotes public confidence in the impartiality of the judiciary, and should avoid impropriety and the appearance of impropriety, as well as the prohibition in Rule 1.3 on the use or attempted use of the prestige of office to advance the interests of the judge or others and in Rule 3.10 on practicing law, the Committee unanimously determined that the Judicial Official should not accept a referral fee. While the Committee was not asked about the propriety of the referral, itself, the Committee noted that in opinion [JE 2008-17](#) it advised the inquiring Judicial Official that he or she may recommend an attorney to an individual provided that (1) the individual who is referred has a sufficiently close relationship to the Judicial Official that the Judicial Official would automatically recuse himself or herself from a case involving that person independent of the recommendation, and (2) in such instances, the Judicial Official should recommend multiple names of counsel.

- V. The Committee briefly discussed its Annual Report to the Chief Justice.
- VI. The meeting adjourned at 9:54 a.m.