

Committee on Judicial Ethics  
Teleconference  
Tuesday, February 24, 2015

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

### MINUTES

- I. With the above noted Committee members present, Judge Keller called the meeting to order at 9:31 a.m. Judge Corradino (alternate) agreed to participate for purposes of approving the meeting minutes and then attended as a member of the public. Although publicly noticed, no other members of the public were in attendance.
- II. The Committee approved the minutes of the January 15, 2015 meeting. (Judge Dennis did not participate in the vote as she did not attend the January 15<sup>th</sup> meeting.)
- III. The Committee discussed **Informal JE 2015-04** concerning whether a Judicial Official may receive an award at a non-law related event and be recognized by the state chapters of an international, not-for-profit corporation committed to enriching, sustaining and ensuring the culture and economic survival of its members' ancestry/ethnicity.

The Judicial Official would be recognized for service to the community, vision, creativity and commitment to service, including work engaged in prior to the Judicial Official's appointment to the bench. The Judicial Official would receive two complimentary tickets to the luncheon, which have a total value of \$100.

The awarding entity is a volunteer service organization dedicated to programming in five specific service areas. Among other activities, the organization has provided scholarships, mentored youth, provided health services, conducted voter registration drives and provided disaster assistance.

Membership is by invitation only, and limited to members of a specific gender. While the majority of members are of a particular race or ethnicity, if the name of a person of a different race or ethnicity is submitted for membership, that person goes through the same membership process. The awards, however, are not limited to a particular gender. While the organization engages in advocacy in support of its programs, a search of the Judicial Branch internet website did not reveal any cases in which the organization is listed as a party. The national organization has a legislative issues and public affairs advocacy team which works with local chapters to make the organization's voice heard in state legislatures throughout the country on issues related to voter protection.

The award will be presented at a luncheon held during a regional conference. (There will be five other award recipients.) The organization stated that the luncheon is not a fundraiser. The organization is being charged \$36 per person for food and service and is charging \$50 per person. The additional funds from those that attend will go to cover "additional costs, programs, awards, gifts for attendees, etc." I inquired whether there would be a program book and was told that a souvenir journal was distributed in advance to the organization's local chapters. While corporate sponsors are being solicited to cover some of the conference events (it is a multi-day conference), as of the moment, none have been confirmed. I also was told that no other form of fundraising would occur at the awards luncheon (i.e. no solicitation of pledges/donations, no auction, no raffle, etc.).

Although the website of the service organization that is seeking to provide the award to the inquiring Judicial Official notes that it engages in some lobbying related to voter rights, the organization has not appeared in any Connecticut court cases and is not likely to appear before the inquiring Judicial Official.

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 1.3 of the Code states that a judicial official 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 3.1 of the Code states that a judge may engage in extrajudicial activities except as prohibited by law and subject to various restrictions including that the judge not participate in activities that (1) interfere with the 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 3.6 (a) prohibits a judge from holding membership in any organization that practices "unlawful discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, physical or mental disability, or sexual orientation." Rule 3.6 (b) notes that a judge shall not use the benefits or facilities of an organization if the judge knows that the organization practices unlawful discrimination as set forth in subsection (a); however, attendance at an event in a facility of such an organization is not a violation of Rule 3.6 when the judge's attendance is an isolated incident that could not reasonably be perceived as an endorsement of the organization's practices.

Rule 3.7 states that subject to Rule 3.1, a judge may participate in activities 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."

The Commentary to this rule states that the activities permitted generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions and other not-for-profit organizations.

Rules 3.13 and 3.15 set forth when a gift or other benefit may be accepted and when such items must be publicly reported. Rule 3.13 states, in relevant part, that unless prohibited by law or receipt would appear to a reasonable person to undermine a judge's independence, integrity or impartiality, a judge may accept and need not publicly report receipt of items of little intrinsic value (such as plaques, certificates, trophies and cards) and ordinary social hospitality and may accept but must report to the extent required by Rule 3.15 gifts incident to a public testimonial and invitations to the judge and a guest to attend without charge an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by the Code. (The inquiring Judicial Official is not a member of the organization issuing the awards.) Rule 3.15 requires that such items be reported if the value of the items alone or

in the aggregate with other items received from the same source exceeds \$250 in the same calendar year.

In *Roberts v United States Jaycees*, 468 U.S. 609 (1984), at issue was whether the Jaycees' policy that women could be associate members but not regular members violated Minnesota's Human Rights Act. The United States Supreme Court held that the application of the Minnesota act to compel acceptance of women as regular members did not abridge either the male members' freedom of intimate association or their freedom of expressive association. The U.S. Supreme Court stated, in relevant part, as follows:

An individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed. See, e. g., *Citizens Against Rent Control/Coalition for Fair Housing v. Berkeley*, [454 U.S. 290, 294](#) (1981). According protection to collective effort on behalf of shared goals is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority. See, e. g., *Gilmore v. City of Montgomery*, [417 U.S., at 575](#); *Griswold v. Connecticut*, [381 U.S., at 482-485](#); *NAACP v. Button*, [371 U.S. 415, 431](#) (1963); *NAACP v. Alabama ex rel. Patterson*, [357 U.S., at 462](#). Consequently, we have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends. See, e. g., *NAACP v. Claiborne Hardware Co.*, [458 U.S. 886, 907-909, 932-933](#) (1982); *Larson v. Valente*, [456 U.S. 228, 244-246](#) (1982); *In re Primus*, [436 U.S. 412, 426](#) (1978); *Abouod v. Detroit Board of Education*, [431 U.S. 209, 231](#) (1977). In view of the various protected activities in which the Jaycees engages, see *infra*, at 626-627, that right is plainly implicated in this case.

Government actions that may unconstitutionally infringe upon this freedom can take a number of forms. Among other things, government may seek to impose penalties or withhold benefits from individuals because of their membership in a disfavored group, e. g., *Healy v. James*, [408 U.S. 169, 180-184](#) (1972); it may attempt to require disclosure of the fact of membership in a group seeking anonymity, e. g., *Brown v. Socialist Workers '74 Campaign Committee*,

[459 U.S. 87, 91-92](#) (1982); and it may try to interfere with the internal organization or affairs of the group, *e. g.*, *Cousins v. Wigoda*, [419 U.S. 477, 487-488](#) (1975). By requiring the Jaycees to admit women as full voting members, the Minnesota Act works an infringement of the last type. There can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire. Such a regulation may impair the ability of the original members to express only those views that brought them together. Freedom of association therefore plainly presupposes a freedom not to associate. See *Aboud v. Detroit Board of Education*, *supra*, at 234-235.

The right to associate for expressive purposes is not, however, absolute. Infringements on that right may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms. *E. g.*, *Brown v. Socialist Workers '74 Campaign Committee*, *supra*, at 91-92; *Democratic Party of United States v. Wisconsin*, [450 U.S. 107, 124](#) (1981); *Buckley v. Valeo*, [424 U.S. 1, 25](#) (1976) (*per curiam*); *Cousins v. Wigoda*, *supra*, at 489; *American Party of Texas v. White*, [415 U.S. 767, 780-781](#) (1974); *NAACP v. Button*, *supra*, at 438; *Shelton v. Tucker*, [364 U.S. 479, 486, 488](#) (1960). We are persuaded that Minnesota's compelling interest in eradicating discrimination against its female citizens justifies the impact that application of the statute to the Jaycees may have on the male members' associational freedoms.

*Roberts v. United States Jaycees*, *id.* at 622-623.

Based upon the information available, including that the Judicial Official is receiving a one-time award and does not seek membership in the awarding organization, and it does not appear that the organization is engaged in unlawful discrimination notwithstanding its membership policy, the Committee determined that the Judicial Official only should accept the award subject to the following conditions: (1) the Judicial Official determines that acceptance of the award from the organization, based upon its membership policies, will not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality in violation of Rules 1.2 and 3.1, (2) the Judicial Official is satisfied that the awards luncheon is not a fundraising event in violation of Rule 3.7, (3) if the Judicial Official accepts the award, the Judicial Official should retain authority to review any communications related to the receipt of the award,

including websites, in order to make sure that there is no attempt to use the prestige of judicial official to advance the interests of the organization in violation of Rule 1.3, and (4) if the Judicial Official receives gifts or other items as part of the award, they are reported to the extent required by Rules 3.13 and 3.15.

In reaching its conclusion, the Committee considered its prior opinions in [JE 2009-35](#) (a Judicial Official can accept invitation to be included in distinguished high school alumni “Wall of Honor” and participate in non-fundraising induction ceremony and reception), [JE 2010-13](#) (subject to various conditions, a Judicial Official may receive an award at a non-fundraising event from a public agency that represents a distinct segment of the criminal justice field for services the Judicial Official provided prior to his or her appointment as a Judicial Official), [JE 2011-29](#) (subject to various conditions, a Judicial Official may accept an award from a non-profit organization that contracts with the Judicial Branch to provide services to court clients), [JE 2012-25](#) (a Judicial Official should not receive an award from Mothers Against Drunk Driving at a non-fundraising program because the organization is a victim support and advocacy group that takes strong positions on DUI cases and lobbies actively on behalf of its interests, and receives a fee from participants who are referred to the DUI victim impact panel program), [JE 2012-29](#) (a Judicial Official should not accept an award from the Susan B. Anthony Project at a candlelight vigil for victims of domestic violence because the organization is a victim support and advocacy group that regularly appears in court on behalf of victims of domestic violence and the Judicial Official had no connection to the group other than his or her judicial rulings), [JE 2013-21](#) (subject to various conditions, Judicial Official can accept an award from a community chamber of commerce at a non-fundraising program recognizing the Judicial Official for community leadership with respect to service prior to the Judicial Official’s appointment as a judge), and [JE 2014-01](#), (while service with the Boy Scouts does not involve illegal discrimination based upon its policy of prohibiting gay adult leaders, such service nevertheless was prohibited by Rule 3.1(3) (participation in activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality).

The Committee also considered opinions from other jurisdictions, including Florida Opinion JE 2014-15 (noting the complexity of determining whether an organization practices invidious discrimination, factors to be considered, and that even as to organizations that do not practice invidious discrimination, the judge determine whether service for such an organization would undermine the judge’s independence, integrity or impartiality), New York Opinion 97-22 (determining that a judge could be a member of a local chapter of Zonta International, an organization involved in the improvement of the legal, political, economic, education and

professional status of women), New York Opinion 96-82 (determining that it was the obligation of the inquiring judge to determine whether an organization of which the judge was a member practiced invidious discrimination), Arizona Opinion 94-13 (holding that membership in an organization is permissible if it does not discriminate invidiously or is purely private and thus constitutionally protected and noting that invidious discrimination exists when the group excludes on the basis of race, sex, religion, or national origin, and the exclusion cannot be justified by an acceptable purpose of promoting legitimate values, and each judge must investigate the relevant facts to determine whether his or her membership is permissible), Massachusetts Opinion 2002-11 (membership and holding a leadership position in the Ancient Free and Accepted Masons of Massachusetts, an organization which limits membership to men, does not violate Canon 2 (C) because, on the facts presented, the Masons do not “invidiously” discriminate, however, there is a danger that participation will weaken public confidence in the judge’s ability to resolve cases involving gender discrimination impartially, in which case Canon 2 (A) may be applied to prohibit or penalize the judge’s participation in the Masons to the extent that the judge’s interest in participation is outweighed by the State’s interests in the appearance of an impartial judiciary), California Opinion 34 (noting, in part, “Where an organization has made a formal decision to end discriminatory membership practices, but those previously excluded have not in fact yet been admitted, the judge who wishes to remain a member must hold a conscientious belief that the open-membership policy is bona fide and will be implemented in the ordinary course of events”), and Indiana Opinion 1-94 (which in Note 3 stated: “Many judges have asked about the propriety of engaging in various activities which draw distinctions by gender. Canon 2C does not proscribe participation in mother-daughter banquets, men’s support groups, college fraternity and sorority alumni groups, boy scouts, girls’ basketball, or single-sex fitness facilities. To the extent any of these constitute organizations, participation signifies nothing untoward about the judge’s commitment to fairness and impartiality, nor are entire protected classes of people being denied economic opportunity by the exclusions in the activities.”)

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