

Committee on Judicial Ethics
Teleconference
Wednesday, April 27, 2011

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

MINUTES

- I. With the above noted members present, Justice Schaller called the meeting to order at 9:23 a.m. Although publicly noticed, no members of the public attended.
- II. Four of the Committee members present approved the draft minutes of the April 19, 2011 meeting. (Judge Lager abstained.)
- III. The Committee considered Judicial Ethics Informal Opinion 2011-09 concerning whether a Judicial Official may serve as a delegate to the annual meeting of an organization that promotes, inter alia, a particular national origin and religious belief, and receive a stipend to offset partially the cost of attending the meeting. As a delegate, the Judicial Official would be expected to vote on policy matters, fiscal outlays, and the election of a new president and new board members.

The Committee considered the following information: (1) the organization has a mission to promote a particular national or ethnic origin and culture, education, philanthropy, and civic responsibility, (2) the organization limits membership to a certain sex a certain age category, and to those who subscribe to a particular religious belief, (3) the organization and/or affiliated entities manage scholarship and charitable foundations, provide leadership and development programs, and run a non-profit housing corporation, (4) the organization and/or affiliated entities engage in political advocacy, both at the national and international level, and (5) the organization and/or its affiliates have approximately one dozen pending cases in Connecticut state courts.

Based on the facts presented, including that: (1) the organization practices discrimination because it excludes certain categories of individuals from full membership on the basis of sex and religion, (2) the organization and/or its affiliates are involved in political advocacy, and (3) the organization and/or its affiliates have a significant number of pending cases in Connecticut courts, the Committee concluded that serving as a delegate at the annual meeting would violate Rule 1.2, which 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 Committee was not specifically asked to determine whether the organization practices or “engages in unlawful discrimination” under Rule 3.6 and no such determination with respect to Rule 3.6 was necessary in light of the other grounds for the response in this instance. The Committee notes, however, that the Committee is not equipped and has not been charged to undertake the kind of fact-finding investigation into the history, background, policies and internal membership that would be required to make such determination. Accordingly, the Committee believes it is the obligation of each Judicial Official to make his or her own determination as to whether an organization to which the Judicial Official belongs practices or engages in “unlawful discrimination.” See New York Advisory Committee on Judicial Ethics Opinion 96-82 (Mar. 13, 1997). Although the Code of Judicial Conduct does not define the meaning of “unlawful discrimination,” the Committee concluded that the Judicial Official may wish to consider the commentary to Rule 3.6 of the ABA Model Code of Judicial Conduct, which in part prohibits “invidious discrimination” on the grounds of sex, religion, national origin, or ethnicity. Comment 2 to Rule 3.6 of the ABA Model Code of Judicial Conduct states as follows

An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization’s current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

See *also* New York Advisory Committee on Judicial Ethics Opinion 96-82 (Mar. 13, 1997) (noting that “[i]f the exclusionary practice is reasonably related to a legitimate purpose (i.e., the ‘preservation of religious, ethnic, cultural or other values of legitimate common interest to its members’), membership is not prohibited” but that if “the discriminatory practice is one in which the policy of exclusion is arbitrary, and excludes persons or categories of persons solely on the basis of the characteristic in question, and by reason of such exclusion stigmatizes such persons or categories of persons solely on the basis of the characteristic in question, ... then the judge must conclude that the discrimination is invidious.”).

Although not included in the inquiry, the Committee observed that the Judicial Official may attend the annual meeting if the Judicial Official determines that his/her membership is permissible under Rule 3.6 as read in the context above noted.

- IV. The Committee considered Judicial Ethics Informal Opinion 2011-10 concerning whether a Judicial Official, who was selected to be a member of a national legal honorary society prior to his or her appointment as a Judicial Official, may accept the society's offer to have his or her annual dues waived. The society offers to waive the annual dues for all members who are Judicial Officials.

Additional facts include that the honorary society is highly selective in its membership, is open to practitioners in diverse areas of the law, and is not limited to those that represent a particular class of client (i.e. not limited to plaintiff or defense attorneys). Membership is generally offered as the result of nomination by an existing member and in-house research of potential candidates, followed by a vetting to determine the potential candidate's qualifications. The purposes of the organization are to recognize highly qualified lawyers, provide a forum for scholarly articles of interest to the membership, professional development, promotion of excellence in advocacy and ethics, and excellence in the judiciary by taking positions on issues that impact the litigation process. Membership dues for Judicial Officials are under \$75, while private attorneys pay significantly more. The Committee unanimously determined that membership in the organization did not violate Rules 1.2, 1.3, 2.4 or 3.1. With respect to the waiver of dues, the Committee unanimously determined that it was not a gift, benefit or other thing of value prohibited by Rule 3.13, but rather was a permitted waiver or partial waiver of fees or charges within the meaning of Rule 3.14(a) and, since the value did not exceed \$250, did not have to be publicly reported provided the value of the dues waiver when combined with the value of any other gifts or waivers from that society during the calendar year do not exceed \$250. See Rule 3.15(a)(3). Finally, the Committee noted that (1) if there was a sponsoring member for the Judicial Official to become a member of the society and that member appears before the Judicial Official, the Judicial Official should disclose the relationship for a reasonable period of time, but not less than one year from the date of the recommendation of the Judicial Official for membership in the society; and (2) the Judicial Official should regularly reexamine the activities of the society to determine if it is proper to continue his or her relationship with it.

- V. The meeting adjourned at 10:03 a.m.