

Committee on Judicial Ethics
Teleconference
Monday, June 23, 2014

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Christine E. Keller, Vice Chair, Judge Barbara M. Quinn and Professor Sarah F. Russell. Staff present: Attorney Martin R. Libbin, Secretary and Attorney Viviana Langou Livesay, Assistant Secretary.

MINUTES

- I. With the above noted Committee members present, Justice Schaller called the meeting to order at 9:37 a.m. Although publicly noticed, no members of the public were in attendance.
- II. The Committee members present approved the minutes of the June 11, 2014 meeting.
- III. The Committee discussed **Informal JE 2014-09** concerning whether a Judicial Official may write a character reference letter in response to a request by an attorney who is the subject of a pending grievance.

The attorney regularly represents litigants in the Judicial Official's court. The grievance panel investigating the matter has found probable cause. The Judicial Official has not been duly summoned.

Rule 1.2 of the Code of Judicial Conduct states that a "judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid 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 as a judge."

Rule 1.3 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."

Rule 2.10 (a) of the Code states that a judge "shall not make any public statement that might reasonably be expected to affect the outcome or 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 3.3 of the Code states as follows:

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

Based on the facts presented, in particular that the JO has not been duly summoned to provide the character reference, the Committee unanimously determined that providing the character reference for an attorney, who is the subject of a grievance proceeding, is specifically prohibited by Rule 3.3 and generally prohibited by Rules 1.2, 1.3 and 2.10(a).

In reaching its decision, the Committee took into account its prior opinions in [JE 2008-15](#) (a Judicial Official should not provide a letter of reference in the context of an adversarial character and fitness proceeding stemming from concern that the candidate cheated on a college exam); [JE 2012-31](#) (a Judicial Official, who had been subpoenaed to testify as a fact witness at an administrative hearing involving a close personal friend, could testify as to factual matters and if asked, respond to questions about the friend's character, but must make clear at the start of his or her testimony that he or she (1) is present pursuant to a subpoena, and (2) is present only in his or her personal capacity); and [JE 2013-30](#) (a Judicial Official may not provide a letter of reference for a long-time friend in connection with a federal sentencing hearing because the Judicial Official had not been subpoenaed).

IV. The meeting adjourned at 9:39 a.m.