

Committee on Judicial Ethics
Teleconference
Thursday, July 18, 2013

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Edward Karazin, Vice Chair, Judge Maureen D. Dennis, and Judge Thomas J. Corradino, Alternate. Staff present: Attorney Martin R. Libbin, Secretary.

MINUTES

- I. With the above noted Committee members present, Justice Schaller called the meeting to order at 9:31 a.m. Although publicly noticed, no members of the public were in attendance.
- II. The Committee unanimously approved the Minutes of the June 27, 2013 meeting.
- III. The Committee reviewed its prior opinion in **Informal JE 2013-27** concerning whether a Judicial Official, who is an adjunct faculty member at a law school, may accept a gift from an attorney, who is also an adjunct, consisting of a book written by the attorney. The author of the book is a practicing attorney who has never appeared and is not likely to appear before the inquiring Judicial Official. Although the book is relevant to the subject-matter of the course that the Judicial Official teaches, it is not a course text and is not being provided for use in the Judicial Official's judicial duties. The book is being provided by the attorney, not the publisher.

The Committee initially determined, at its June 27, 2013 meeting, that the JO should not accept the book. The Committee noted that the Connecticut Code of Judicial Conduct permits acceptance of a gift only if (1) it is not prohibited by law, (2) a reasonable person would not believe that acceptance of the gift would undermine the Judicial Official's independence, integrity or impartiality, and (3) the gift is specifically permitted under Rule 3.13(b) or Rule 3.13(c). Based upon the information provided, the Committee unanimously determined on June 27th that if the Judicial Official determines that the donor attorney is a person "whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification under Rule 2.11", the Judicial Official may accept the gift pursuant to Rule 3.13(b)(2). If the donor is not such a person, however, the Code prohibits a Judicial Official from accepting the gift.

After further discussion, the Committee agreed to reconsider *sua sponte* its decision in Informal JE 2013-27. The Committee modified its opinion and concluded as follows:

Rule 1.2 requires a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and to avoid impropriety and the appearance of impropriety.

Rule 3.13 concerns the acceptance and reporting of gifts, loans, bequests and other things of value. Subsection (a) states that “A judge may 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.”

Subsection (b) sets forth items which may be accepted without being publicly reported while subsection (c) sets forth when an item that is accepted must be reported.

Comment (1) to Rule 3.13 states as follows:

Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge’s decision in a case. Rule 3.13 imposes restrictions on the acceptance of such benefits, according to the magnitude of the risk. Subsection (b) identifies circumstances in which the risk that the acceptance would appear to undermine the judge’s independence, integrity, or impartiality is low and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under subsection (a) from accepting the gift, or required under subsection (c) to publicly report it.

Based upon the information provided, including that the donor is not a person who has ever appeared or is likely to appear before the Judicial Official, the Committee members in attendance unanimously determined that the acceptance of the gift was not prohibited by law and would not appear to a reasonable person to undermine the Judicial Official’s independence, integrity, or impartiality. The Committee members further determined that consistent with Rule 3.13(a) the Judicial Official may accept the book.

- IV. The Committee discussed **Informal JE 2013-33** concerning whether a Judicial Official may speak on a panel at an enrichment event for the Women’s Caucus of the Connecticut Trial Lawyers Association.

The event is an informal dinner, with an estimate of 40 – 50 people in attendance. The theme of the event is to offer advice, observations and life lessons from the perspective of a judge, as well as to discuss work-life balance issues and career path choices. The Judicial Official is expected to speak for approximately 10 minutes (two other judges have been or will

be asked to join the panel) and then answer questions in an “informal, conversational” setting. According to the invitation, the caucus is committed to working towards the advancement and promotion of women in the legal profession and the event contributes to that goal. Entrance fees are \$65 for members and \$75 for non-members. The Judicial Official’s dinner would be paid for by the caucus. The event is not a fundraiser and is open to everyone. Members of the caucus could appear before the Judicial Official. However, at least currently, the Judicial Official does not know who is a member of the caucus.

Rule 1.2 of the Code of Judicial Conduct provides 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 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 states that a judge may engage in extrajudicial activities, except as prohibited by law; however, a judge shall not participate in activities that will interfere with the proper performance of judicial duties, lead to frequent disqualification or appear to a reasonable person to undermine the judge’s independence, integrity or impartiality.

Similarly, Rule 3.7(a) provides that a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice and enumerates several permitted activities, such as speaking at an event.

Based on the facts presented, including that the caucus is a “specialty bar association” that reflects a particular group of lawyers, i.e., women (see D.C. Advisory Committee Opinion 4), but does not appear to limit membership to women and that the dinner is open to everyone, the Committee unanimously determined that the Judicial Official may speak at the dinner to offer advice, observations and life lessons from the perspective of a judge, as well as to discuss work-life balance issues and career path choices, provided the organization is not currently involved in litigation before the court of which the Judicial Official is a member or publicly promotes highly controversial issues pending before the court or likely to come before the court. In rendering this opinion, the Committee also considered its prior opinions in [JE 2012-10](#) (judge may join local ethnic bar association, with conditions) and [JE 2011-09](#) (judge should not serve as a delegate at the annual meeting of an organization that limits its membership to a certain sex, age, group, or to individuals who subscribe to a particular religious belief).

V. The meeting adjourned at 10:08 a.m.