

Committee on Judicial Ethics
Teleconference
Thursday, August 18, 2016

Committee members present via teleconference: Judge Christine E. Keller (Chair), Judge Maureen D. Dennis (Vice Chair), Professor Sarah F. Russell, Judge Angela C. Robinson and Judge Robert B. Shapiro. Staff present: Attorney Martin R. Libbin (Secretary) and Attorney Viviana L. Livesay (Assistant Secretary).

MINUTES

- I. Judge Keller called the meeting to order at 9:30 a.m. Although publicly noticed, no members of the public were present. New member, Judge Robert B. Shapiro, was welcomed to the Committee.
- II. Judge Keller, Judge Dennis and Professor Russell approved the minutes of the July 21, 2016 meeting. Judges Robinson and Shapiro abstained.
- III. The Committee discussed **Informal Opinion JE 2016-12**. The facts are as follows. A Judicial Official and a State's Attorney maintain a close personal relationship. They have socialized with each other for almost thirty years, predating the Judicial Official's appointment to the bench and the friend's appointment to the position of State's Attorney. The Judicial Official stated that he/she will recuse himself/herself from any case that is tried by the State's Attorney and will not rule on any application signed by the State's Attorney (i.e., search warrant, etc.). The inquiring Judicial Official asks whether he/she may preside over criminal cases that are tried by Assistant State's Attorneys who work under the supervision of a State's Attorney. If the Judicial Official may preside, the Judicial Official further asks whether he/she has a duty to disclose his/her close personal relationship with the State's Attorney.

Unlike in [JE 2011-06](#), the inquiring Judicial Official notes that there are no appearances filed by the State's Attorney's Office in criminal cases and the information, which is provided to the jury, states that "The undersigned Prosecuting Authority of the Superior Court of the State of Connecticut charges that..." and is signed by the Assistant State's Attorney who is trying the case. The State's Attorney's name does not appear on the information unless the State's Attorney is trying the case, in which case the Judicial Official will recuse himself/herself.

Rule 1.2 of the Code 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 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 2.4 (b) states that a judge "shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment."

Rule 2.11 (a) states that a judge "shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:...(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of the facts that are in dispute in the proceeding." Comment (1) states, in relevant part, that "[u]nder this Rule, a judge is disqualified whenever any of the specific provisions of paragraphs (a)(1) through (5) apply."

This Committee has previously considered disqualification and disclosure issues involving attorneys who maintain close personal relationships with judges. In [JE 2010-28](#), this Committee found that there was no duty to disqualify from presiding over a motion to reconsider involving a friend's law firm. Under the facts of that inquiry, the lawyer-friend was last at the Judicial Official's home within the past year and the friend was essentially retired. Although disqualification was not required, the Committee determined that the Judicial Official has a duty to disclose the relationship with counsel. The Committee also advised that if a motion to disqualify is filed, the Judicial Official must exercise his/her discretion in deciding the motion based upon the information provided in the motion and the accompanying affidavit, as well as the particular circumstances of the case.

At issue in [JE 2011-06](#) was whether a Judicial Official has a duty to disqualify himself/herself or disclose his/her personal relationship with the current Attorney General in any proceeding in which a member of the Office of the Attorney General has filed an appearance. The opinion noted the fact that when an attorney in the Office of the Attorney General files an appearance in the case, the appearance form includes not only the signature of the individual AAG, but also the name of the Attorney General. This Committee concluded that the Judicial Official does not have a duty to automatically disqualify himself/herself when a member of the Attorney General's Office appears; however, the Judicial Official has a duty to disclose his or her personal relationship with the Attorney General to the parties and their counsel. Thereafter, if a motion to disqualify is filed, the Judicial Official must exercise his or her discretion in deciding the motion.

In [JE 2014-03](#), this Committee considered whether a Judicial Official has a duty to recuse or to disclose his/her relationship with a former partner or former law firm when members of a newly merged law firm (comprised of members of the former law firm) appear before the Judicial Official. In addition to maintaining a

close relationship with the Judicial Official's former partner, the Judicial Official occasionally socializes with one of the partners of the new firm. Based on the facts presented, this Committee unanimously determined that the Judicial Official does not have a duty to automatically disqualify himself/herself when members of the newly merged large law firm appear before the Judicial Official, provided the Judicial Official does not believe that he or she has any personal bias (favorable or unfavorable) involving the new law firm. The Judicial Official does, however, have a duty to disclose his/her personal relationships. If a motion to disqualify is filed, the Judicial Official must exercise his/her discretion in deciding the motion based upon the information provided in the motion and accompanying affidavit.

Based upon the facts presented, the Committee determined that the Judicial Official may preside over criminal cases that are tried by Assistant State's Attorneys who work under the supervision of a State's Attorney, but should disclose the nature of his/her close personal relationship with the State's Attorney with all parties/counsel. Thereafter, if a motion to disqualify is filed, the Judicial Official must exercise his/her discretion in deciding the motion based upon the information provided in the motion and accompanying affidavit. The fact that the information provided to the jury fails to specifically list the name of the State's Attorney was deemed insufficient to negate the obligation for disclosure.

IV. New Business

Question: Is the Committee being too restrictive regarding recommendations and referrals? A few members of the bench have expressed that the two year disclosure requirement is too restrictive. The Committee discussed this issue and agreed that the two year disclosure requirement is appropriate given the fact that the test is for appearance of impropriety is determined by how others perceive the conduct.

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