

Committee on Judicial Ethics
Teleconference
Tuesday, October 29, 2013

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Christine E. Keller, Vice Chair, Judge Maureen D. Dennis and Professor Sarah F. Russell. Staff present: Attorney Martin R. Libbin, Secretary and Attorney Viviana L. Livesay, Assistant Secretary.

MINUTES

- I. With the above noted Committee members present, Justice Schaller called the meeting to order at 9:36 a.m. Although publicly noticed, no members of the public were in attendance.
- II. Justice Schaller, Judge Dennis and Professor Russell approved the minutes of the September 16, 2013 meeting. Judge Keller abstained.
- III. The Committee discussed **Informal JE 2013-42** concerning whether a Judicial Official (“JO”) may serve as a panelist speaker at a foreclosure seminar hosted by the Connecticut Mortgage Bankers Association (“CMBA”).

At least five other panelists have been asked to speak at the CMBA seminar entitled “Meet the Foreclosure Court.” The other invited speakers include a plaintiff’s attorney, a defendant’s attorney, a state marshal, and two Judicial Branch employees (the Program Manager for Foreclosure Mediation and the New Haven Foreclosure Clerk). The CMBA would like the JO, who currently sits on foreclosure matters, to provide a “view from the bench” overview. Anticipated attendees include attorneys, housing counselors, realtors and mortgage brokers. Registration fees are \$70 for members and \$100 for non-members. The JO will not receive a fee for participation or any reimbursement of expenses.

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 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 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 provides that “[a] judge shall not make any public statement that might reasonably be expected to affect the outcome or to impair the fairness of a matter pending or impending in any court or make any nonpublic statement that might substantially interfere with a fair trial or hearing.” Rule 2.10(d) recognizes certain exceptions to this prohibition, including an exception for a judge’s public statement to “explain court procedures.”

Rule 2.11 of the Code requires disqualification “in any proceeding in which the judge’s impartiality might reasonably be questioned” due to personal bias or prejudice.

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 (1) will interfere with the proper performance of judicial duties, (2) lead to frequent disqualification, (3) appear to a reasonable person to undermine the judge’s independence, integrity or impartiality, (4) appear to a reasonable person to be coercive, or (5) make use of court premises, staff or resources except for incidental use or for activities that concern the law, the legal system or the administration of justice, or if the use is permitted by law. The rule’s commentary encourages judges to participate in appropriate extrajudicial activities and observes that “[j]udges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law.” Rule 3.1, cmt. (1).

Rule 3.7(a)(4) states that “[s]ubject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations ... concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit,” including “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.”

Rule 3.10 contains the Code’s prohibition against the practice of law.

Based upon the information provided, the Committee unanimously determined that the Judicial Official may participate in the CMBA's foreclosure seminar subject to the following conditions:

- (1) The Judicial Official's participation does not interfere with the proper performance of the Judicial Official's duties nor create grounds upon which the Judicial Official may have to recuse him/herself. Rule 3.1.
- (2) The Judicial Official does not give opinions that would cast doubt on the Judicial Official's impartiality or indicate that the Judicial Official has a predisposition with respect to a particular case. Rules 3.1(3) & 2.11(a).
- (3) The Judicial Official should refrain from any inappropriate comment (as indicated above) about pending or impending matters. Rule 2.10(a).
- (4) The Judicial Official should not offer legal advice as to how specific matters should be handled and should exercise caution in answering questions that seek to elicit such advice. Rule 3.10.
- (5) The Judicial Official should retain the right to review and pre-approve the use of any biographical information or other material used to describe his or her participation in the program. Rule 1.3.

In reaching its decision, the Committee took into account its prior opinions in: [JE 2008-14](#) (JO may participate in a law-related educational program where questions may be asked by the audience, subject to certain conditions); [Formal Opinion JE 2010-21](#) (Judge Trial Referee may speak to a group of Department of Public Health employees who are engaged in the licensing, investigation and quality improvement of daycare facilities, subject to certain conditions); and [JE 2013-39](#) (JO may speak to a class of law school students about the legislative and state budget process, alone or on a panel with current or former legislators, some of whom may be lawyers, subject to certain conditions).

- IV. The Committee discussed **Informal JE 2013-43** concerning whether a Judicial Official ("JO") may speak on a panel at a non-profit trade media organization's annual meeting and share comments relating to the topic of "Media & the Law".

The organization represents all 17 newspapers in Connecticut and is active on a range of issues including legislative matters, freedom of information, education, news, advertising, and digital media. The theme for this year's session is: "Newspapers: Change is Good." According to the organizer, the event should attract approximately fifty industry

professionals (such as newspaper publishers, advertising managers and editors). Two attorneys, who specialize in First Amendment litigation and media law, have also been asked to participate on the panel. The JO will not receive a fee for participation or any reimbursement of expenses.

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 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 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 provides that “[a] judge shall not make any public statement that might reasonably be expected to affect the outcome or to impair the fairness of a matter pending or impending in any court or make any nonpublic statement that might substantially interfere with a fair trial or hearing.” Rule 2.10(d) recognizes certain exceptions to this prohibition, including an exception for a judge’s public statement to “explain court procedures.”

Rule 2.11 of the Code requires disqualification “in any proceeding in which the judge’s impartiality might reasonably be questioned” due to personal bias or prejudice.

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 (1) will interfere with the proper performance of judicial duties, (2) lead to frequent disqualification, (3) appear to a reasonable person to undermine the judge’s independence, integrity or impartiality, (4) appear to a reasonable person to be coercive, or (5) make use of court premises, staff or resources except for incidental use or for activities that concern the law, the legal system or the administration of justice, or if the use is permitted by law. The rule’s commentary encourages judges to participate in appropriate extrajudicial activities and observes that “[j]udges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted

for profit, even when the activities do not involve the law.” Rule 3.1, cmt. (1).

Rule 3.7(a)(4) states that “[s]ubject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations ... concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit,” including “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.”

Rule 3.10 contains the Code’s prohibition against the practice of law.

Based upon the information provided, the Committee unanimously determined that the Judicial Official may speak on a panel at the trade media organization’s annual meeting and share comments relating to the topic of “Media & the Law”, subject to the following conditions:

- (1) The Judicial Official’s participation does not interfere with the proper performance of the Judicial Official’s duties nor create grounds upon which the Judicial Official may have to recuse him/herself. Rule 3.1.
- (2) The Judicial Official does not give opinions that would cast doubt on the Judicial Official’s impartiality or indicate that the Judicial Official has a predisposition with respect to a particular case. Rules 3.1(3) & 2.11(a).
- (3) The Judicial Official should refrain from any inappropriate comment (as indicated above) about pending or impending matters. Rule 2.10(a).
- (4) The Judicial Official should not offer legal advice as to how specific matters should be handled and should exercise caution in answering questions that seek to elicit such advice. Rule 3.10.
- (5) The Judicial Official should retain the right to review and pre-approve the use of any biographical information or other material used to describe his or her participation in the program. Rule 1.3.

In reaching its decision, the Committee took into account its prior opinions in: JE 2013-42 (JO may serve as a panelist speaker at a foreclosure seminar hosted by the Connecticut Mortgage Bankers Associations) and [JE 2008-25](#) (JO may participate on a “Law Talk” segment of a local radio station program devoted to the Judicial Branch’s foreclosure mediation

program, subject to five conditions (nearly identical to the ones enumerated above). See also [JE 2008-14](#); [Formal Opinion JE 2010-21](#) and [JE 2013-39](#).

- V. The meeting adjourned at 9:41 a.m.