

Committee on Judicial Ethics
Teleconference
Thursday, April 21, 2016

Members present via teleconference: Judge Christine E. Keller (Chair), Judge Maureen D. Dennis (Vice Chair), Professor Sarah F. Russell and Judge Thomas J. Corradino (Alternate). Staff present: Attorney Martin R. Libbin (Secretary).

MINUTES

- I. With the above noted Committee members in attendance, Judge Keller called the meeting to order at 9:34 a.m. Although publicly noticed, no members of the public were present.
- II. Judge Keller, Judge Corradino and Professor Russell approved the minutes of the January 21, 2016 meeting. (Judge Dennis abstained.)
- III. The Committee unanimously ratified **Emergency Staff Opinion JE 2016-03**, as drafted. The Committee unanimously ratified **Emergency Staff Opinion JE 2016-06** with the following modification: that a condition be added indicating that the Judicial Official should not use his/her position in order to be included in the program.
- IV. The Committee discussed **Informal JE 2016-04** concerning whether the inquiring Judicial Official in [JE 2013-48](#) has a continuing duty to disclose that his/her relative (at the third degree of kinship) previously worked as an associate at a certain law firm and make the inquiries set forth in [JE 2013-48](#). If the Judicial Official has a duty to disclose, how long does the duty continue after the relative leaves the firm?

This inquiry was submitted by the inquiring Judicial Official in [JE 2013-48](#). According to the Judicial Official, the relative (at the third degree of kinship) who worked at a multi-office law firm in JE 2013-48, no longer works for the firm. At the time of that opinion, the Judicial Official was advised that based upon the facts presented, the Judicial Official was not automatically disqualified from presiding over cases involving the law firm subject to three conditions:

- 1) The Judicial Official had a duty to disclose on the record his or her relationship whenever the firm or any of its members appear before the Judicial Official, and inquire whether the relative was involved in any manner with the acquisition or representation of the client, or has more than a de minimis interest that could be substantially affected by the proceeding.

- 2) If the relative was involved in the acquisition or representation of the client, or has more than a de minimis interest that could be substantially affected by the proceeding, the Judicial Official should recuse him or herself or follow the procedure set forth in Rule 2.11(c) to request the parties to consider whether to waive the Judicial Official's disqualification.
- 3) If the relative had no involvement in the acquisition or representation of the client, and does not have more than a de minimis interest that could be substantially affected by the proceeding, the Judicial Official may preside over the case unless a motion for disqualification is filed and based upon the information provided in the motion and accompanying affidavit, as provided for in Connecticut Practice Book § 1-23, as well as the particular circumstances of the case, the Judicial Official determines that he or she should recuse him or herself.

Rule 1.2 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 states, in relevant part, that "(b) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment. (c) A judge shall not convey or permit others to convey the impression that any person or organization is in a position 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" Some of the specifically identified circumstances requiring disqualification are when the judge has a personal bias or prejudice concerning a party or a party's lawyer or when the judge knows that the judge's "spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is ... acting as a lawyer in the proceeding ... [or] a person who has more than a de minimis interest that could be substantially affected by the proceeding". Rule 2.11(a)(1) and Rule 2.11(a) (2) (B) and (C). An additional circumstance requiring disqualification occurs when the judge knows that the judge, "individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding." Rule 2.11 (a) (3). Comment (4) to Rule 2.11 states as follows: "The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under subsection (a) or the relative is known by the judge to have an

interest in the law firm that could be substantially affected by the proceeding under subsection (a) (2) (C), the judge's disqualification is required."

Rule 2.11 (c) states that a judge subject to disqualification under this Rule, except for bias or prejudice under subsection (a)(1), "may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive the disqualification, provided that the judge shall disclose on the record the basis of such disqualification. If, following the disclosure, the parties and lawyers agree, either in writing or on the record before another judge, that the judge should not be disqualified, the judge may participate in the proceeding."

The Committee reviewed [Florida Judicial Ethics Advisory Opinion 2003-18](#). The question raised in this inquiry was whether disclosure and disqualification was required when a law firm appears before the judge that has employed the judge's brother as an expert witness in a different matter not pending before the judge. The Florida committee determined that that the judge would not be obliged to disclose or disqualify when the firm appeared in his/her court, but was required to apply the below guiding principles on disclosure:

The judge should disclose matters which he or she believes might reasonably impair his or her impartiality. However, after searching his o[r] her conscience and determining that the matter will not have an effect, disclosure is not required.

Based upon the facts of this inquiry, the Committee unanimously determined that the Judicial Official does not have a continuing duty to disclose his/her relative's prior employment relationship once the relative stops working for the firm, unless the relative, while he/she was at the firm, worked on the case now pending before the Judicial Official or still expects to receive a financial benefit of any kind from the firm. If the relative worked on the case or expects to receive a financial benefit, the Committee agreed that the three conditions imposed in [JE 2013-48](#) would still apply. The Committee noted that, pursuant to Rule 2.11(a)(1), the Judicial Official should consider whether he/she harbors any bias (favorable or unfavorable) against the firm. If any bias exists, the Judicial Official must disqualify him/herself from hearing any cases involving the firm.

- V. The Committee discussed **Informal JE 2016-05** concerning whether a Judicial Official has a duty to disclose when a former temporary assistant clerk (hereinafter, TAC) who had been assigned to work specifically with the Judicial Official appears before the Judicial Official. The TAC last worked for the Judicial Official more than 4 years ago.

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 2.11 states, in relevant part, that a judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned.

In reaching its decision, the Committee considered two of its prior decisions concerning TACs. In Informal [JE 2015-11](#), this Committee considered whether a Judicial Official may provide a letter of reference to the AG's Office in support of an applicant who works for the Judicial Official as a temporary assistant clerk. The Committee determined that the Judicial Official may provide a reference letter, subject to several conditions. One condition prohibited the applicant from having an appearance before the Judicial Official at the time (or reasonably close to the time) the recommendation was provided. It also noted that the applicant should not expect to have an appearance before the Judicial Official for a reasonable period of time.

At issue in Informal [JE 2009-36](#) was whether a Judicial Official should restrict a TAC from interacting with law firms to which the TAC has applied for a position. The Committee concluded that the Judicial Official must exercise his or her discretion in determining whether a TAC should be restricted when the TAC has been offered a position or is engaged in active employment negotiations with the law firm. If the Judicial Official determines that the TAC should be restricted, that restriction should be for a "reasonable period of time," as determined by the Judicial Official. Opinions issued by this Committee have defined "reasonable period of time" to mean "not less than two years." (See [JE 2008-21](#) & [JE 2015-21](#)).

Based upon the facts presented, in particular that the TAC last worked for the Judicial Official more than 4 years ago, the Committee concluded that the Judicial Official has no duty to disclose. Even in instances where the TAC has not only worked for the Judicial Official, but obtained letters of reference, the reasonable period of time for disclosure (and disqualification) was two years.

VI. New Business

The Committee was advised that Emergency Staff Opinion JE 2016-07 would be circulated for comment later today. (It will be placed on the May 19th agenda for ratification.)

VII. The meeting adjourned at 9:53 a.m.