

Committee on Judicial Ethics  
Teleconference  
Thursday, October 20, 2016

Committee members present via teleconference: Judge Christine E. Keller (Chair), Judge Maureen D. Dennis (Vice Chair), Professor Sarah F. Russell, Judge Robert B. Shapiro and Judge Angela C. Robinson (at 9:37 a.m.). Staff present: Attorney Martin R. Libbin (Secretary), Attorney Viviana L. Livesay (Assistant Secretary) and Attorney Adam P. Mauriello (Assistant Secretary).

### MINUTES

- I. Judge Keller called the meeting to order at 9:31 a.m. Although publicly noticed, no members of the public were present. New Assistant Secretary, Attorney Adam P. Mauriello, was welcomed as staff to the Committee.
- II. The Committee members present approved the minutes of the August 18, 2016 meeting.
- III. The Committee ratified **Emergency Staff Opinion JE 2016-13**. The facts of the inquiry are as follows. A Judicial Official and the Judicial Official's spouse volunteered to assist a non-profit organization that is not related to the law, the legal system or the administration of justice. The Judicial Official did not engage in fund-raising, but rather provided assistance consistent with Rule 3.7 (i.e. planning related to the fund-raiser, serve as an usher, food preparer, etc.). The Judicial Official inquired whether their names could be listed in a fund-raising program journal, in which there are paid listings, if they are listed with others under a heading that recognizes those who volunteered.

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 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 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.

Rule 3.7 concerns participation in educational, religious, charitable, fraternal, or civic organizations and activities. Subject to the requirements in Rule 3.1, a judge is permitted to participate in various activities sponsored by or on behalf of such entities. Subject to the requirements in Rule 3.1, subsection (a) (4) specifically authorizes judges "appearing or speaking at, receiving an award or other recognition at, 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". Note (4) to Rule 3.7 states "Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons."

This inquiry was circulated to the Committee members and their input was solicited and received. Based upon the facts provided, it was determined that the inclusion of the Judicial Official's and his or her spouse's names in the fund-raising book under a heading of volunteers was comparable to having the Judicial Official's name on fund-raising letterhead, and therefore the Judicial Official's and his or her spouse's names could be included, provided that the Judicial Official's title should not be listed unless the titles of other volunteers were also listed. The Judicial Official also was advised that his or her name should not be part of a paid listing.

- IV. The Committee discussed **Informal Opinion JE 2016-14**. The facts are as follows. A Judicial Official has had a personal friendship for many years with a non-attorney whose son was recently admitted to the bar and is working for a small firm that handles cases in the court where the Judicial Official is currently assigned. The Judicial Official has not socialized with the son's parents for approximately 5 years, but he/she still periodically keeps in touch by phone, text and the Judicial Official and parents are "friends" on Facebook. The Judicial Official and the son are not friends, nor are they "friends" on Facebook. Is the Judicial Official disqualified, or does he or she have a duty to disclose, when (1) the son or (2) a member of the law firm appears before the Judicial Official?

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 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 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....”

At issue is whether the Judicial Official’s relationship with the non-attorney friend is sufficiently close to require disclosure and/or disqualification. “The obvious problem of the appearance of bias and favoritism exists when a friend or associate appears before the judge; these social relationships should not diminish the dignity of the judiciary or interfere with judicial responsibilities.... Whether disqualification is required when a friend appears as a party to a suit before a judge depends on how close the personal relationship is between the judge and the party. The standard here is... a judge must disqualify him or herself ‘in any proceeding in which the judge’s impartiality might reasonably be questioned.’” J.J. Alfani, et al., *Judicial Conduct and Ethics*, 4<sup>th</sup> Ed., §4.09.

In prior opinion [JE 2013-20](#), this Committee examined the nature of a social relationship to determine whether disqualification was warranted. Based on the facts of the inquiry, including that the relationship between the Judicial Official and attorney was no longer ongoing, the Committee determined that the Judicial Official and the attorney have a minimal social relationship that does not require disqualification provided that:

1. The Judicial Official does not believe that he/she has a personal bias or prejudice (favorable or unfavorable) involving the attorney; and
2. The Judicial Official fully discloses the relationship with the attorney to the parties and their counsel for a reasonable period of time, which is not less than two years from the date of their last social contact (including any ongoing social contacts). Thereafter, if a motion to disqualify is filed, the Judicial Official should exercise his or her discretion in deciding the motion based upon the information provided in the motion and the accompanying affidavit, as provided for in Connecticut Practice Book § 1-23, as well as the particular circumstances of the case

In reaching its decision in [JE 2013-20](#), this Committee considered New York Advisory Opinion 11-20 wherein the New York committee stated that a judge “is ordinarily in the best position to assess whether in a particular proceeding the judge’s impartiality might be reasonably questioned due to the personal relationship between the judge and the attorney... The judge should take into account factors such as the nature of the relationship, as well as the frequency

and the context of the contacts.” The New York committee determined that when a judge and an attorney have a minimal social relationship (such as dining together once a year and the judge’s children were members of the attorney’s wedding party more than five years ago), no disclosure or disqualification is necessary. However, where there is a close social relationship (i.e., monthly visits and dinners out a few times each year), disqualification is warranted.

Based on the facts presented, including that the Judicial Official and the attorney’s parents have not socialized for approximately 5 years (other than via occasional phone, text or social media contact) and that the Judicial Official and the attorney/son are not friends, the Committee concluded that the Judicial Official and the parents have a minimal social relationship that does not require disqualification unless the Judicial Official believes that he/she has a personal bias or prejudice (favorable or unfavorable) involving the attorney/son. On the question of disclosure, the Committee determined that there is no duty to disclose the nature of the relationship with the attorney’s parents because their last social contact was more than two years ago.

- V. The Committee discussed the legislative history of Connecticut General Statutes § 51-39a (Use of judicial office for financial gain prohibited). The members noted that although the legislation was initially enacted to prevent judges hiring relatives to work for them, the language adopted is much broader and prohibits the use of “judicial office or any confidential information received through his holding judicial office to obtain financial gain for himself, his spouse, child, child’s spouse, parent, brother or sister or a business with which he is associated.”
- VI. The meeting adjourned at 9:40 a.m.