



Connecticut Committee on Judicial Ethics

Informal Opinion Summaries

2017-03 (June 15, 2017)

**Use of Office; Promoting Public Confidence; Fundraising
Rules 1.2, 1.3, 2.10, 3.1 & 3.7**

Issue & Facts: The Connecticut Women’s Hall of Fame has asked a Judicial Official to be an Honoree at its annual induction ceremony. Three individuals will be inducted and approximately 10 individuals will be recognized as Honorees. While the induction ceremony is a fundraiser, the program is designed to recognize the contributions of the women who are Inductees and Honorees. The Judicial Official has inquired if she may participate as an Honoree and, if so, if it is permissible for the Judicial Official to participate in a media interview regarding her experience that qualifies her to be an Honoree.

The mission of the Connecticut Women’s Hall of Fame is to “Honor publicly the achievements of Connecticut women, Preserve their stories, Educate the public and Inspire the continued achievement of women and girls.” Each year there is a theme for the individuals who are inducted or recognized as an honoree. This year’s theme is “Heroic Women: Honoring those who Protect & Serve”. This year’s Inductees are Captain Kristen Griest, the first female infantry officer in the U.S. Army and one of the first two women to graduate from Army Ranger School; Major Regina Rush-Kittle, a military and law enforcement trailblazer and the highest ranking African American woman to serve in the Connecticut State Police; and Colonel Ruth A. Lucas, the first African American woman to attain the rank of Colonel in the U.S. Air Force and an advocate for improved educational opportunities for service personnel. According to the Judicial Official and the Chair of the Board of Trustees of the Connecticut Women’s Hall of Fame, the Judicial Official primarily would be recognized for her experience as a prosecutor, but also for her services as a soldier (albeit that was only for a limited number of years) and her current status as a Judicial Official. Among the other Honorees for this year is Deirdre M. Daly, U.S. Attorney for the District of Connecticut. Discussion of the Honorees at the Induction Ceremony will take place as time permits.

Relevant Code Provisions: 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 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 states that a judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court or make any non-public statement that might substantially interfere with a fair trial. It further provides that a judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

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 the use is permitted by law.

Rule 3.7 (a) states that subject 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, as well as those sponsored by or on behalf of educational, religious, charitable, fraternal or civic organizations not conducted for profit, including, but not limited to, the following activities: "(4) 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". Comment (1) to this Rule notes that the activities permitted by subsection (a) "generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions and other not-for-profit organizations, including law related, charitable, and other organizations." Comment (2) to this Rule notes that "Even for law related organizations, a judge should consider whether ... the nature of the judge's participation in or association with the organization would conflict with the judge's obligation to refrain from activities that reflect adversely on a judge's independence, integrity, and impartiality."

Response: The issue of appearing at or receiving an award at a fund-raising event has previously been considered by this Committee. Some of those opinions are discussed below.

In [JE 2010-30](#), this Committee considered whether a Judicial Official could be (1) honored at a fund-raising event hosted by a law-related organization that provides legal services, and (2) featured in advance publicity. The Committee concluded that the Judicial Official may be honored at the event because it was one that “concerns the law, the legal system, or the administration of justice” under Rule 3.7 (a)(4). With respect to publicity, this Committee advised that special care must be taken to ensure that the Judicial Official’s name is not being used to encourage law firm participation and that no appearance is created that any of the donors or the organization is in a special position to influence the Judicial Official.

In [JE 2012-15](#), this Committee determined that a Judicial Official who had served as a member of a task force created to study issues concerning the administration of criminal justice could attend and be acknowledged at a fund-raising event hosted by a nonprofit law-related organization.

In [JE 2012-22](#), at issue was whether a Judicial Official, prior to his or her resignation from the bench, could authorize, assist and agree to be the guest of honor at a fund-raising event that would benefit an organization that concerns the law, the legal system or the administration of justice. Based upon the facts presented, including that the “retirement” event involved fund-raising for a non-profit organization concerned with the law, the legal system or the administration of justice, that the Judicial Official would not know in advance of the event who had purchased tickets, the event would take place after the Judicial Official’s retirement, and that the Judicial Official would not preside over any contested matters once the tickets were offered for sale, the Committee unanimously determined that the Judicial Official could agree to be the guest of honor at the “retirement” fund-raising event. The Committee further determined that the proposed event would not create an appearance of impropriety in violation of Rule 1.2 and also would not constitute an attempt to use the prestige of office to advance the interests of others in violation of Rule 1.3.

While the foregoing opinions concern appearing and being a guest of honor at a law-related organization’s fund-raising event, it is important to note that the new Code of Judicial Conduct, which was adopted effective January 1, 2011, provides in Rule 3.7 that subject to the requirements of Rule 3.1, a judge may participate in activities (1) sponsored by organizations or governmental entities concerned with the law, the legal system or the administration of justice, and (2) those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations which are not conducted for profit. Rule 3.7(a) states that Judicial

Officials can participate in such activities “including, but not limited to, the following activities” and then lists 6 types of activities. Subdivision (4), as noted above, concerns appearing or speaking at, receiving an award, being featured on the program of and permitting his or her title to be used in connection with the event “of such an organization or entity, but if the event serves a fund-raising purpose, the judge may only participate only if the event concerns the law, the legal system, or the administration of justice”.

Applying the fund-raising purpose of an event to non-law related entities is consistent with the foregoing plain language of the Code as well as the opinion expressed by Cynthia Gray in her article “Nexuses and tangents: The law, the legal system, or the administration of justice”, which appeared in *Judicial Conduct Reporter*, Vol. 37, No. 1, Spring 2015. (This is a change from the opinion Ms. Gray initially took when the model code was first adopted.) In particular, at page 11, she stated the following:

In a new exception created in the 2007 model code, Rule 3.7(A)(4) provides that a judge may appear, speak, or receive an award at, be featured on the program of, and permit his or her title to be used in connection with a fund-raising event for a non-profit organization “only if the event concerns the law, the legal system, or the administration of justice.” The Florida version of the rule provides that “the law, the legal system, or the administration of justice” applies to both the organization sponsoring the fund-raising event and the purpose for which the funds are being raised.

In this case, the sponsoring organization is a 501(c)(3) nonprofit civic/educational organization and therefore qualifies as an organization within the meaning of Rule 3.7. Therefore, under our Code of Judicial Conduct, the question presented is whether the “event” is one that “concerns the law, the legal system, or the administration of justice”. Unlike Florida, Connecticut does not require that the purpose for which the funds are being raised also relate to “the law, the legal system, or the administration of justice”.

In [JE 2011-02](#), this Committee, by a vote of 3 – 1, determined that in order for a governmental committee, board, commission or other governmental position to be deemed concerned with the law, the legal system, or the administration of justice for purposes of Rule 3.4, “there must be a direct nexus between what a governmental commission does and how the court system meets its statutory and constitutional responsibilities – in other words, how the courts go about their business.” In a footnote, the Committee specifically noted that it was not deciding if the same interpretation of the phrase “the law, the legal system, or the administration of justice” would apply in interpreting Rule 3.2, which concerns appearances before governmental

bodies and consultation with government offices. Similarly, the Committee has not formally adopted the definition used in Rule 3.4 for Rule 3.7, although it is construing the same phrase.

In [JE 2016-13](#), this Committee determined that a Judicial Official and his or her spouse who volunteered to assist a non-profit organization that was not related to the law, the legal system or the administration of justice could be listed in a fund-raising program journal, in which there were paid listings, subject to the following conditions: (1) the names appeared under a heading for volunteers; (2) the Judicial Official's title was not listed unless the title of other volunteers was included; and (3) the Judicial Official could not have his or her name included as part of any paid listing. The rationale for that decision was that being listed in the program journal was similar to being listed on an organization's letterhead that was used for fundraising purposes, which is specifically permitted in Comment (4) to Rule 3.7 ("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.")

In [JE 2016-15](#), this Committee determined that subject to the following conditions a Judicial Official could be a guest of honor and speaker at a municipal historical society's fundraiser where the subject of the program and the Judicial Official's comments were about the evolution of the law, the courthouses in the municipality, the municipality as a seat of judicial power, and the role of the judicial process: (1) the Judicial Official not discuss pending or impending cases in any court and not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court or make any non-public statement that might substantially interfere with a fair trial or hearing; (2) the Judicial Official did not personally believe that attendance and participation as a guest of honor would create an appearance of impropriety or appear to a reasonable person to be coercive; (3) the Judicial Official retained authority to review any press release or invitation to make sure that there was no attempt to use the prestige of judicial office to advance the interests of the organization, although the Judicial Official was permitted to be featured on the program and to allow his or her name and title to be used in connection with the event; and (4) if the organization appears before the Judicial Official as a party within a reasonable period of time following the event, the Judicial Official should disclose the fact that he or she attended the fund-raising event and was a guest of honor.

The question presented by this inquiry is whether the recognition of the Judicial Official for her role as one who "protects and serves" is done so as part of a program that concerns the law, the legal system or the administration of justice. The three Inductees are clearly being

honored for their military and law enforcement service. While the Judicial Official's service as a prosecutor and Judicial Official can be viewed as relating to the administration of justice, she also is being recognized for her military service. However, the question is not whether the Judicial Official warrants the honor, but rather whether the program at which the honor would be given is one that concerns the law, the legal system or the administration of justice.

Based upon the facts provided, including that the event at which the Judicial Official would be recognized is designed for "Heroic Women: Honoring those who Protect and Serve", and the major focus is on the three Inductees for their military and law enforcement service, the Committee unanimously determined that the event is not one that concerns the law, the legal system or the administration of justice within the meaning of Rule 3.7. The Committee noted that the Judicial Official could be an Honoree at a future program, based upon her service as a prosecutor and Judicial Official, if one of the major program themes concerns the law, the legal system or the administration of justice.

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