

Committee on Judicial Ethics
Teleconference
Friday January 3, 2014

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

MINUTES

- I. With the above noted Committee members present, Justice Schaller called the meeting to order at 9:32 a.m. Although publicly noticed, no members of the public were in attendance.
- II. The Committee members present approved the minutes of the November 21, 2013 meeting.
- III. The Committee discussed **Informal JE 2013-48** concerning whether a Judicial Official (“JO”), who is not a member of an appellate level court, should recuse him or herself or disclose his or her relationship to a first year associate in a large, multi-office Connecticut law firm when other members of the firm appear before the Judicial Official. The associate is a relative in the third degree of kinship who does not reside in the JO’s household. (A table of the degrees of kinship is attached as part of the Minutes.) The JO will not preside over any case in which the relative files an appearance.

Rule 1.2 states that a judge “shall 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” Two of the specifically identified circumstances requiring disqualification are 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)(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.”

In reaching its conclusion, the Committee considered an article in the Judicial Conduct Reporter, volume 33, No. 3 (Fall 2011) devoted to a discussion of disqualification when a relative’s law firm appears in a case before a judge, New York Joint Opinions 07-114 and 07-120, South Carolina Opinion 8-2012, as well as this Committee’s decisions in [JE 2010-26](#), [JE 2011-06](#) and [JE 2012-03](#). In the New York opinions, that Committee determined that a judge must recuse him or herself when the judge’s first cousin (fourth degree of kinship) appears as an attorney before the judge, subject to remittal of the disqualification, but the judge does not have to disclose or recuse him or herself when other attorney’s in the cousin’s law firm appears. By contrast, the New York Committee stated that when the judge’s sibling (second degree of kinship) or a member of the sibling’s law firm appears before the judge, the judge must recuse him or herself, subject to remittal of the disqualification. The New York opinion did not distinguish between a relative who is an associate versus a relative who was a partner. The South Carolina Committee concluded that while a judge is disqualified from presiding over cases in which a niece or nephew (third degree of kinship) appeared as an attorney, the judge may be able to preside over cases in which other members of the relative’s law firm appear. The Committee basically left it

to the judge to decide whether his or her impartiality might reasonably be questioned when other members of the relative's law firm appeared and that in making that determination, the judge should consider whether the judge's ruling would have a substantial effect on the relative's interest in the law firm. Like other committees that have considered the question, the South Carolina Committee noted that any disqualification could be waived by the parties.

This Committee, in [JE 2010-26](#), determined that in accordance with Canon 2's proscription with respect to avoiding an appearance of impropriety, a Judicial Official should disclose the close, ongoing financial relationship involving a subleasing arrangement and occasional case referrals between the Judicial Official's sibling (second degree of kinship) and an attorney whenever that attorney appears before the Judicial Official. Similarly, in [JE 2011-06](#), the inquiring Judicial Official had known the Attorney General for over 20 years and they periodically socialized with each other. The Judicial Official would recuse him or herself in any case in which the Attorney General personally appeared. The Judicial Official inquired about a duty to disclose the personal relationship when other members of the Attorney General's Office appeared. This Committee concluded that while there was no duty to automatically disqualify him or herself in all cases involving an appearance by the Office of the Attorney General, the Judicial Official had a duty to disclose the personal relationship to the parties and their counsel. Furthermore, if a motion to disqualify was filed, the Judicial Official should exercise his or her discretion in deciding the motion based upon the information provided in the motion and accompanying affidavit, as provided for in Practice Book § 1-23, as well as the particular circumstances of the case. In [JE 2012-03](#), this Committee determined that a Judicial Official who was married to a governmental lawyer was not disqualified from presiding over all cases involving the governmental law office. However, the Judicial Official should disclose the marital relationship in any case in which an attorney from the unit where the Judicial Official's spouse worked appeared before the Judicial Official and the Judicial Official should inquire whether the spouse had any involvement in the case. If the spouse had any involvement, the Judicial Official was to 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. If the spouse had no involvement in the case, the Judicial Official could preside over the case unless a motion for disqualification was filed and based upon the information provided in connection with that motion the Judicial Official determined that he or she should recuse him or herself. It also was suggested, but not required, that the Judicial Official disclose the marital relationship in any case in which an attorney from the spouse's governmental office appeared, even if the attorney was from a different functional or geographical unit of that office.

Based upon the facts of this inquiry, including that the relative is at the third degree of kinship, a first year associate in a large, multi-office law firm, does not reside in the Judicial Official's household and the Judicial Official is not a member of an appellate level court, the Committee unanimously determined as follows: The Judicial Official is not disqualified from presiding over cases involving the law firm subject to the following conditions:

The Judicial Official should 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.

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.

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.

IV. The meeting adjourned at 9:43 a.m.