

Committee on Judicial Ethics
Teleconference
Thursday, March 17, 2022

Committee members present via teleconference were Judge James T. Graham (Chair), Judge Robert B. Shapiro, Judge Michael P. Kamp and Judge Karen Goodrow (alternate), and Professor Carolyn W. Kaas. Also present were Attorney Joseph J. Del Ciampo, Secretary to the Committee and Adam P. Mauriello, Assistant Secretary to the Committee.

MINUTES

I. Judge Graham called the meeting to order at approximately 9:02 a.m. Although publicly noticed, no members of the public were present.

II. The Committee unanimously approved the minutes of the October 21, 2021, Regular Meeting.

III. The Committee discussed Emergency Staff Opinion **JE 2022-01** concerning the following issue: May a Judicial Official (JO) accept an emergency transfer of custody as a family placement by the Department of Children and Family Services (DCF) of the JO's grandchild?

The JO, who is currently assigned to juvenile matters, was asked by DCF to take immediate custody of the JO's grandchild as a family placement. At the time of the inquiry by the JO, no legal or contested proceeding was pending involving the placement or transfer of custody of the child in the Judicial District to which the JO is assigned and all interested parties agreed to the placement of the child.

Relevant Code Provisions: The provisions of the Code of Judicial Conduct (hereinafter, Code) that are deemed relevant to the subject inquiry are Rules 1.2 (Promoting Confidence in the Judiciary), 2.1 (Giving Precedence to the Duties of Judicial Office), Rule 2.4 (External Influences on Judicial Conduct or Judgment), Rule 2.11 (Disqualification), Rule 3.1 (Extrajudicial Activities in General).

Response: Rule 1.2 of the Code of Judicial Conduct 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 2.1 of the Code states that "The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities."

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 of the Code states, in relevant part, "(a) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might be reasonably questioned including, but not limited to, the following circumstances: (1) The judge has a personal bias or prejudice concerning a party"

Rule 3.1 of the Code concerns extrajudicial activities and sets forth general limitations on such activities, such as ... not participating in activities that (1) 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"

In JE 2021-02, the Committee considered the following relevant inquiry:

A JO assigned to juvenile matters was a foster parent to two children and was receiving Department of Children and Families (DCF) subsidies for those two children and two adopted children. The JO was in the process of adopting the two foster children and expected the process to be completed in a short period of time. Once the adoption was completed, the JO would have no further foster children, but would receive adoption subsidies from DCF in an amount set pre-adoption. The JO inquired whether he/she is disqualified from presiding over juvenile cases involving DCF because of the subsidies.

The Committee concluded that:

During the adoption application process and while the children are still in foster care, the judge should disqualify him/herself (subject to remittal under Rule 2.11(c)) from any case involving DCF. Once the adoption is completed, DCF supervision would end and the judge can go back to hearing cases and no further disclosure or disqualification of the matter is required when hearing any cases or proceedings involving DCF.

The connection between proceedings involving DCF and the receipt of previously determined adoption subsidies is too attenuated to be an "interest that could be substantially affected by the proceeding" or an "economic interest" under Rule 2.11 (a)(2)(C) and Rule 2.11(a)(3) or to cause an appearance of impropriety.

Based on the information provided in the instant matter, and after consultation with those members of the Committee who were immediately available, it was concluded that:

- under the emergent circumstances involved, the JO was not precluded from accepting the immediate family placement
- because all parties involved agreed to the transfer and family placement, and because no contested proceeding to determine the transfer and/or custody of the child was pending, the subject family placement was appropriate and did not create a situation for the JO that would involve a conflict under the Code
- when, if ever, the child's transfer to and/or placement with the JO becomes a contested matter, the appropriateness of such transfer and/or placement and its effect on the ethical obligations of the JO must be revisited, consistent with JE 2021-02

The JO was advised (through the emergency staff opinion) that the agreed upon transfer of the child from DCF and placement of the child with the JO as an emergency family placement did not, under the subject facts, present a conflict for the JO under the Code of Judicial Conduct.

After discussion, the Committee unanimously approved the emergency staff opinion.

IV. The Committee discussed Informal Opinion **JE 2022-02** concerning the following issue: May a Judicial Official (JO) who has taken custody of his/her grandchild through an emergency transfer of custody and family placement facilitated by the Department of Children and Families (DCF) preside over juvenile cases if the child placed with the JO needs wraparound services from a private therapeutic agency?

Facts: The JO is currently assigned to juvenile matters and has taken custody of his/her grandchild through an emergency family placement by DCF. The child may require wrap around services from a private therapeutic agency, such that the JO needs a foster care license from that agency and, if licensed, there will be a subsidy from the agency. At the time of the emergency placement, no legal or contested proceeding was pending involving the placement or transfer of custody of the child in the Judicial District to which the JO is assigned.

After discussion, the Committee deferred decision on the matter and requested that the Secretary to the Committee obtain additional information from the JO, namely, whether the State or the provider of wraparound services would issue the required foster care license, who would provide the anticipated subsidies and what is the nature of those subsidies, what are the types/terms of the wraparound services that are or may be provided to the child, whether, and if so how often, does the provider of the foster care license, wraparound services , and/or subsidies appear before the JO.

IV. New Business: The use of *Microsoft Teams* as the vehicle by which Committee meeting are held in the future was raised by the Secretary to the Committee. After discussion, the Committee unanimously approved the use of *Microsoft Teams* as the communications platform (video and/or audio) by which future Committee meeting would be conducted. In connection therewith, it was decided that the Secretary would provide the *Teams* link to all interested parties on request, and that the call-in only option for participation would be continued.

V. The meeting adjourned at 9:45 a.m.