

Committee on Judicial Ethics
Teleconference
Thursday, March 19, 2015

Members present via teleconference: Judge Barbara M. Quinn, Professor Sarah F. Russell, Judge Angela C. Robinson, Judge Thomas J. Corradino (alternate) and Judge Maureen Dennis, Vice Chair. Staff present: Attorney Martin R. Libbin, Secretary and Attorney Viviana L. Livesay, Assistant Secretary.

MINUTES

- I. With Professor Russell, Judge Robinson and Judge Corradino in attendance, Acting Chair Judge Quinn called the meeting to order at 9:40 a.m. Although publicly noticed, no members of the public were present.
- II. The Committee members present (Russell, Robinson, Corradino & Quinn) approved the February 19, 2015 and February 24, 2015 meeting minutes.
- III. Judge Maureen Dennis entered the teleconference at 9:42 a.m.
- IV. The Committee discussed **Informal JE 2015-05**. The facts are as follows. A municipality is having town meetings regarding what to do with an old, closed school in the town's center. There is a proposal to renovate it for the town's recreation department offices, including the addition of a full gym for the recreation program and travel sports' program usage. May the Judicial Official make any statements, as a travel sport coach in support of the proposal, at any of the meetings?

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 1.3 of the Code 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 3.2 of the Code provides that “[a] judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or legislative body or official, except: ... (3) when the judge is acting in a matter involving the judge’s legal or economic interests or when the judge is acting in a fiduciary capacity.” The commentary to Rule 3.2 provides in part that “it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, a judge should state affirmatively that the judge is not acting in his or her official capacity and must otherwise exercise caution to avoid using the prestige of judicial office.” Rule 3.2 cmt. (3).

In reaching its decision, the Committee considered two of its prior opinions: [JE 2012-31](#) (judicial official may testify as to factual matters provided the judicial official makes clear at the start of his or her testimony that he/she is (1) present pursuant to a subpoena and (2) is present only in his or her personal capacity) and [JE 2012-20](#) (judicial official, who was a victim of a property crime at his/her home, may give a statement or affidavit to the police and testify, if necessary, at any subsequent criminal proceeding, subject to two conditions). The Committee also considered the following advisory opinions from other jurisdictions: [Massachusetts CJE Opinion No. 2007-2](#) (judge may attend the meetings of a town board, subject to certain limitations. One of the conditions was that the judge should not identify him/herself as a judge or allow others to do so, and the judge should not otherwise exploit his/her judicial office in any way); [NY Opinion 13-178](#) (judge, who owns a home in a multi-unit building, may publicly express his/her views on a proposal by building maintenance employees to unionize, provided the judge does so in his/her capacity as a private citizen and does not use judicial stationery or otherwise refer to his/her judicial office); and [FL JEAC Opinion 2010-20](#) (judicial candidate may attend a town hall meeting, hosted by an elected state representative, put on for the limited purpose of discussing the outcome of the legislative session).

Based on the facts presented, including that the Judicial Official is appearing in his/her capacity as a private citizen and travel sports coach, the Committee unanimously determined that the Judicial Official may attend and speak at the town meeting to discuss future uses of the old school, subject to the following conditions:

- 1) The Judicial Official shall state affirmatively that he or she is speaking solely in his or her capacity as a resident/private citizen and travel sports coach. Rule 3.2, cmt. (3); and

- 2) The Judicial Official shall otherwise exercise caution to avoid using the prestige of judicial office in any way. Rule 1.3.
- V. Attorney Martin Libbin updated the members on the status of two pending emergency staff opinions which will appear on the April 16, 2015 meeting agenda for ratification.
- VI. The meeting adjourned at 10:02 a.m.