

Committee on Judicial Ethics
Teleconference
Friday, June 1, 2012

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Edward R. Karazin, Jr., Vice Chair, Professor Jeffrey A. Meyer, Judge Maureen D. Dennis and Judge Thomas J. Corradino, Alternate. Staff present: Attorney Martin R. Libbin, Secretary and Attorney Viviana L. Livesay, Assistant Secretary.

MINUTES

- I. Justice Schaller called the meeting to order at 9.32 a.m. Although publicly noticed, no members of the public attended.
- II. The Committee members present unanimously approved the Minutes of the May 15, 2012 meeting.
- III. The Committee considered Judicial Ethics Informal 2012-10 concerning whether a Judicial Official may join a Connecticut chapter of a national ethnic bar association. The Connecticut chapter is a non-profit, non-partisan corporation created to address the concerns of the particular ethnic legal community and to improve the administration of justice. The national organization communicates the views of its members to state and federal officials on matters of common concern, including the impact of legislation, judicial selections, and improvement of the administration of justice. The national organization also conducts legal seminars, furnishes law students with financial aid, and promotes international legal exchanges. Membership in the national bar association is limited to lawyers who by birth or extraction, or by marriage are related to a person who by birth or extraction is from the particular ethnic group, or to any other lawyer who supports the purposes and objectives of the organization. There is no indication on the application for membership in the Connecticut chapter that one must belong to a particular ethnic group, although there is a reference to those who share a common heritage. Furthermore, unlike with respect to [JE 2011-09](#), there is no indication that the Connecticut chapter or the national organization limits membership to a certain sex, age, group, or to individuals who subscribe to a particular religious belief. A search of the Connecticut Judicial Branch website did not reveal any cases currently or in the recent past in which the Connecticut chapter or the national organization was a party.

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.” Rule 3.1 of the Code of Judicial Conduct provides that subject to certain conditions a judge “may engage in extrajudicial activities except as prohibited by law.” Similarly, Rule 3.7(a) provides that a judge may participate in activities sponsored by organizations

concerned with the law, the legal system, or the administration of justice and enumerates several permitted activities.

Based upon the information provided, the Judicial Official may join as a member of the local ethnic bar association, but should regularly reexamine the activities and rules of the association to determine whether it is proper for the Judicial Official to continue his or her relationship with it and should carefully consider whether the Judicial Official's identification with or involvement in specific programs or activities of the association may undermine confidence in the Judicial Official's independence, integrity and impartiality.

- IV. The Committee considered Judicial Ethics Informal 2012-15 concerning whether a Judicial Official, who served as a member of a task force created to study issues concerning the administration of criminal justice, may attend and be acknowledged at a fund-raising event hosted by a nonprofit law-related organization.

A Judicial Official and his/her spouse have been invited to attend a fund-raising reception hosted by a nonprofit law-related organization. The purpose of the fund-raising event is to support a fund established to assist victims of the criminal justice system. At the reception, the nonprofit's organizer plans to acknowledge the work of the Judicial Official's task force, and express hope that the changes that follow from the task force's recommendations will result in positive policy reforms. Due to the Judicial Official's leadership position in the task force, the Judicial Official believes that the organizer plans to mention the Judicial Official by name. The Judicial Official and his/her spouse intend to pay the applicable fee to attend the event.

Rule 3.1 of the Code provides that subject to certain conditions a judge "may engage in extrajudicial activities except as prohibited by law." The rule's commentary encourages judges to participate in appropriate extrajudicial activities and observes that "[j]udges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice." Rule 3.1, cmt. (1). Similarly, Rule 3.7 (a) provides that a judge may participate in activities sponsored by organizations concerned with the law, the legal system, and the administration of justice... 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.

Based upon the information provided, including that the organization is a nonprofit organization concerned with the law, the legal system, and the administration of justice and the event concerns the law, the legal system, or the administration of justice under Rule 3.7 (a)(4) (See [Informal Opinion JE](#)

[2012-07](#)), the Committee unanimously determined that the Judicial Official may attend and be honored at the fund-raising event.

- V. The Committee considered Judicial Ethics Informal 2012-16 concerning whether a Judicial Official may complete and submit a questionnaire about a lawyer who is being considered for inclusion in a highly selective international legal honorary society (hereinafter Society).

The facts presented included that the lawyer has appeared before the Judicial Official in the past and it is likely that the lawyer or a member of the lawyer's firm will appear before the Judicial Official in the future (although currently no case is pending before the Judicial Official involving the lawyer or his or her firm); there is a multi-stage process for admission into the Society; until a lawyer under consideration for membership is recommended for approval by the Board, at which time he or she is asked to provide additional personal information, the Society's rules state that the lawyer is not to be advised, directly or indirectly, of his or her nomination; the Society notes that all information gathered is confidential and an essential part of the admission process is to obtain information from judges before whom the candidate has appeared; and members of the Society include civil and criminal lawyers, as well as those who represent plaintiffs and defendants. In addition, the questionnaire basically asks a limited number of questions, many of which can be answered "yes" or "no" or by checking a box. Based upon the responses that the Judicial Official would provide, the Judicial Official would not be requested to provide any additional information or explanation.

Rule 1.2 requires a judge to act in a manner that promotes public confidence in the impartiality of the judiciary and to avoid impropriety as well as the appearance of impropriety. Rule 1.3 prohibits a judge from using or attempting to use the prestige of judicial office to advance the personal or economic interests of the judge or others or to allow others to do so. Judges are permitted, however, to provide letters of reference or recommendation based on the judge's personal knowledge. Rule 2.1 states that the judicial duties of a judge take precedence over all of the judge's personal and extrajudicial activities, while Rule 2.11 requires a judge to disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned including, but not limited to, occasions when the judge has a personal bias or prejudice concerning a party's lawyer.

Based upon the information provided, including that there will be no public disclosure of the completed questionnaires or summaries of questionnaires and that the lawyer did not submit the name of the Judicial Official who will complete the questionnaires and will not be provided with information regarding the Judicial Official, the Committee unanimously determined that completing the questionnaire under review was analogous to providing a letter of support for an attorney as authorized, subject to conditions, by [JE 2009-05](#). The Committee specifically determined that this inquiry was not

analogous to completing a peer review for *Martindale-Hubbell*, which was prohibited in opinion [JE 2011-17](#). Therefore, the Judicial Official may complete and submit the questionnaire subject to the following conditions: (1) the Judicial Official has personal knowledge of the candidate's qualifications that are relevant to membership in the Society, (2) the candidate is not a relative of the Judicial Official within the meaning of the Code or C.G.S. § 51-39a, (3) the Judicial Official indicates that the opinions expressed represent the personal opinions of the Judicial Official, (4) neither the nominated attorney nor members of his or her law firm or the Society have an appearance before the Judicial Official at the time the questionnaire is provided or for a reasonable period, under the circumstances, before or after the submission of the questionnaire, and (5) if the Judicial Official believes that recusal would be required in order to comply with condition (4) because his or her fairness would be impaired, and that recusal is likely to be frequent, the Judicial Official should not submit the questionnaire.

- VI. Justice Schaller recused himself from participating in Judicial Ethics Informal 2012-12, 2012-13 and 2012-14 and exited the teleconference at 9:44 a.m.
- VII. The remaining members of the Committee (Karazin, Meyer, Dennis, & Corradino) considered Judicial Ethics Informal 2012-12. At issue in this inquiry is whether a Judicial Official may maintain a personal webpage on which the Judicial Official's biographical information, articles, books, courses, talks and lectures are listed? The webpage would be accessible primarily through one or more websites maintained by academic institutions at which the Judicial Official teaches or independently. If it is permissible for the Judicial Official to maintain a personal webpage, may the webpage contain (a) information identifying the Judicial Official's judicial status and (b) links to the websites of publishers of the Judicial Official's writings and to online book sellers such as Amazon.com where the Judicial Official's books are described and sold?

Rule 1.2 of Code 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 2.10 of the Code prohibits judges from making any public statement "that might reasonably be expected to affect the outcome or to 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."

Rule 2.11 of the Code requires disqualification of a judge in “any proceeding in which the judge’s impartiality might reasonably be questioned including, but not limited to, the following circumstances... (4) The judge has made a public statement, other than in a court proceeding, judicial decision, or opinion that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.”

Rule 3.1 of the Code concerns extrajudicial activities and sets forth general limitations on such activities, such as not using court premises, staff or resources, except for incidental use or for activities that concern the law, the legal system, or the administration of justice unless otherwise permitted by law and 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, or (4) appear to a reasonable person to be coercive.

Based upon the information provided, the Committee concluded that the Judicial Official may maintain a personal webpage, accessible through an academic institution’s website or independently, which contains biographical information, identifies the Judicial Official’s judicial status, and lists the Judicial Official’s articles, books, courses, talks and lectures, subject to the following conditions:

(1) the Judicial Official should retain the right to review and pre-approve the use of any biographical information about the Judicial Official listed on any personal webpage (see Rule 1.3);

(2) the Judicial Official should ensure that the personal webpage does not include comments about any pending or impending matters (see Rule 2.10);

(3) the Judicial Official should ensure that the personal webpage does not contain content which would cast doubt on the Judicial Official’s impartiality or otherwise reflect any predisposition in particular cases (see Rules 2.11(a), 3.1(3)); and

(4) the Judicial Official monitors the webpage to ensure that it does not link to commercial or advocacy group websites, including links to commercial websites for the primary purpose of selling books. Because a book may be sold by numerous vendors, a link to a single or select vendor such as Amazon.com could raise questions concerning preferential treatment of vendors. It is, however, permissible for the Judicial Official webpage to include a link to a publisher’s website, specifically to a publisher’s webpages that describe the Judicial Official’s books or other writings. In general, the Judicial Official should exercise caution in choosing website links because of the potential that such choices could be perceived as an endorsement of the contents and/or owner of such other website.

VIII. The Committee considered Judicial Ethics Informal 2012-13 concerning: (1) whether a Judicial Official may cooperate with his/her publisher's program of publicizing his/her book through standard channels, such as a publisher's website, sending out review copies, arranging book signings, obtaining interviews and talks, provided that the Judicial Official does not get directly involved in financial transactions and retains control over promotional activities and (2) whether a Judicial Official may retain a professional promotional firm to supplement the publisher's program of book promotion, provided that the Judicial Official does not get directly involved in financial transaction and retains control over promotional activities.

Rule 1.2 of 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 2.10 of the Code prohibits judges from making any public statement "that might reasonably be expected to affect the outcome or to 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."

Rule 2.11 of the Code requires disqualification of a judge in "any proceeding in which the judge's impartiality might reasonably be questioned including, but not limited to, the following circumstances... (4) The judge has made a public statement, other than in a court proceeding, judicial decision, or opinion that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy."

Rule 3.1 of the Code concerns extrajudicial activities and sets forth general limitations on such activities, such as not using court premises, staff or resources, except for incidental use or for activities that concern the law, the legal system, or the administration of justice unless otherwise permitted by law and 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, or (4) appear to a reasonable person to be coercive.

Rule 3.11 of the Code limits a judge from participating in business or financial transactions that will *inter alia* (1) interfere with the proper performance of judicial duties, (2) lead to frequent disqualification of the judge, (3) involve the judge in frequent or continuing transactions with

attorneys or parties who are likely to come before the court on which the judge serves.

Based upon the facts submitted, the Committee determines that the Judicial Official (a) may cooperate with his/her publisher's program of publicizing his/her book through standard channels, such as a publisher's website, sending out review copies, arranging book signings, obtaining interviews and talks, and (b) may retain a professional promotional firm to supplement the publisher's program of book promotion, subject to the following conditions:

1. the Judicial Official should not get directly involved in financial transactions that would interfere with the proper performance of judicial duties and should retain control over promotional activities (Rules 1.2, 1.3, 3.1 & 3.11);
2. the Judicial Official may participate in book signings, provided they are not held at the courthouse or any location that would lend the prestige of office (Rule 1.2, 1.3 & 3.1);
3. the Judicial Official should not use, or permit others to use, his/her judicial title or office or otherwise exploit the judicial position for promotional purposes. The Judicial Official's title and experience as a judge may, however, be included in the author's biography as long as the biographical sketch contains only factual statements intended to inform the reader of the judge's qualifications and experience (Rule 1.3);
4. the Judicial Official should retain the right to review and pre-approve the use of any biographical information about the Judicial Official used in connection with any promotion activity (Rule 1.3);
5. With respect to participating in interviews and talks, the Judicial Official should follow the restrictions set forth in [Informal Opinion JE 2008-25](#):
 - a. the appearance does not interfere with the Judicial Official's judicial duties (Rule 3.1.(1)),
 - b. the Judicial Official does not give opinions which would cast doubt on the Judicial Official's impartiality (Rule 3.1 (3)),
 - c. the Judicial Official is careful not to express opinions or to present the topic in any way that would indicate that the Judicial Official has a predisposition with respect to particular cases (Rule 2.11(a)), and
 - d. the Judicial Official's presentation is factual and instructive about the procedures and parameters of the subject matter but does not include comments about any pending matters (Rule 2.10).

- IX. The Committee considered Judicial Ethics Informal 2012-14 concerning whether a Judicial Official, who has written about a subject of public policy involving concerns about the welfare of a particular category of Americans, may advocate publicly for -- or permit his/her name to be used in connection with advocacy by others in connection with -- the creation of a governmental commission to study and attempt to provide solutions for the concerns. The advocacy would be non-partisan in terms of politics and would concern the law, the legal system and the administration of justice, in part. The advocacy would involve urging the establishment of a governmental commission to

make recommendations concerning the criminal justice system, as well as other issues that may be involved. The “others” include other authors who are authorities on the subject, plus academics and public officials. Rule 1.2 of the Code 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 provides that a judge “shall not use or attempt to use the prestige of judicial office to advance the private interests of the judge or others or allow others to do so.”

Rule 2.10 of the Code prohibits judges from making “any public statement that might reasonably be expected to affect the outcome or to impair the fairness of a matter pending or impending in any court”

Rule 2.11 of the Code requires disqualification “in any proceeding in which the judge’s impartiality might reasonably be questioned” due to personal bias or prejudice.

Rule 3.1 of the Code concerns extrajudicial activities and sets forth general limitations on such activities, such as not using court premises, staff or resources, except for incidental use or for activities that concern the law, the legal system, or the administration of justice unless otherwise permitted by law and 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, or (4) appear to a reasonable person to be coercive.

Rule 3.2 of the Code prohibits judges from appearing voluntarily at public hearings before governmental commissions, or consulting with governmental officials, except: “(1) in connection with matters concerning the law, the legal system, or the administration of justice; (2) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge’s judicial duties; or (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.”

Rule 3.7 of the Code deals specifically with participation with educational, religious, charitable, fraternal and civic organizations and activities. Subsection (a) of Rule 3.7 provides that, subject to the general requirements in Rule 3.1, a judge may participate in activities sponsored by or on behalf of organizations not conducted for profit including, but not limited to: ...

(4) appearing or speaking 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;

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs or activities but only if the organization is concerned with the law, the legal system, or the administration of justice;

Rule 3.10 of the Code contains the prohibition against the practice of law.

Based upon the information provided, including that the proposed activity is non-partisan and that the advocacy is for the establishment of a governmental commission, an activity that is primarily concerned with the law, the legal system and the administration of justice, the Committee determined that the Judicial Official may advocate publicly for -- or permit his/her name to be used in connection with advocacy by others in connection with -- the creation of a governmental commission pursuant to Rule 3.2 & 3.7, subject to the following conditions:

- 1) the participation does not interfere with the Judicial Official's judicial duties (see Rule 3.1(1));
- 2) the Judicial Official does not give opinions which would cast doubt on the Judicial Official's impartiality (see Rule 3.1(3));
- 3) the Judicial Official's responses are factual and instructive about the subject matter but do not include comments about any pending or impending matters (see Rule 2.10);
- 4) the Judicial Official is careful not to express opinions in a way that would indicate that the Judicial Official has a predisposition with respect to particular cases (see Rule 2.11(a));
- 5) the Judicial Official should disqualify himself or herself if the Judicial Official knows he or she has a personal bias or a strong feeling involving an issue in a case before the Judicial Official (See Rule 2.11 (a)), and
- 6) the Judicial Official does not provide legal advice (see Rule 3.10).

X. The meeting adjourned at 10:43 a.m.