

Committee on Judicial Ethics
Teleconference
Wednesday, July 20, 2011

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Linda K. Lager, Vice Chair, Judge Edward R. Karazin, Jr., and Judge Thomas J. Corradino, Alternate. Staff present: Martin R. Libbin, Esq., Secretary and Viviana L. Livesay, Esq., Assistant Secretary.

MINUTES

- I. With the above noted members present, Justice Schaller called the meeting to order at 9:36 a.m. Although publicly noticed, no members of the public attended.
- II. The Committee members present unanimously approved the Minutes of the June 24, 2011 meeting.
- III. The Committee considered Judicial Ethics Informal Opinion 2011-15 concerning whether a Judicial Official may accept appointment to and serve on the board of directors of a nonprofit, 501 (c) (3) non-stock corporation which is affiliated with an Executive Branch agency.

The nonprofit is a "foundation" within the meaning of C.G.S. § 4-37e in that it is tax exempt and was established for the principal purpose of receiving or using funds for charitable, scientific, cultural, educational or related purposes that support or improve a state agency. It is subject to audit by the state's Auditors of Public Accounts. The primary purposes of the organization are to increase citizen interest and participation in state and local government and to stimulate education of and involvement of school-aged children concerning government. A specified elected official is an ex-officio non-voting member of the board of directors and was responsible for selecting the initial membership of the foundation's board of directors.

Rule 3.4 of the Code of Judicial Conduct provides that a judge "shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice." Accordingly, the propriety of the Judicial Official's appointment to the board of directors of the foundation depends on the answers to two questions: (1) Does the appointment to the board of the foundation constitute an appointment to a governmental position?, and (2) If so, does the work of the foundation concern the law, the legal system, or the administration of justice?

With respect to the first question, the Committee determined that appointment to the board would constitute appointment to a governmental position within the meaning of Rule 3.4 based upon the following facts: (a) According to the Auditors of Public Accounts, the nonprofit corporation was

established as a foundation within the meaning of C.G.S. § 4-37e(2), for the “principal purpose of receiving or using private funds for purposes that support or improve a state agency,” (b) the foundation is regularly audited by the state’s Auditors of Public Accounts, (c) the elected official of the Executive Branch agency was responsible for appointing the initial board of directors, and (d) according to the inquiring Judicial Official, there may be some overlap between the duties of the Executive Branch official and the activities of the foundation. The Committee noted that however salutary for the public a judge’s service in this position may be, Rule 3.4 prohibits such service unless the foundation “is one that concerns the law, the legal system or the administration of justice.”

The second question involves an assessment of the work of the foundation to determine whether it is a legal system-related government organization that is appropriate for judicial membership or an organization that does not fall within the exception of Rule 3.4. The Committee noted that it had recently adopted the position that in order for a governmental committee or commission to qualify as one that concerns the law, the legal system or the administration of justice, “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.” See Connecticut Informal Opinions JE 2011-02, 2011-03, 2011-04 and 2011-05 (Feb. 3, 2011). To qualify as an acceptable law-related activity, “the activity must be directed toward the objective of improving the law, *qua* law, or improving the legal system or administration of justice, and not merely utilizing the law or the legal system as a means to achieve an underlying social, political, or civic objective.” See U.S. Advisory Committee Opinion No. 93. Applying the “direct nexus” standard to the facts presented, the Committee concluded that the duties of the foundation, designed to improve education and participation in government and to support and improve the Executive Branch agency, are insufficiently related to the justice system or the improvement of the law to fall within the scope of the exception to Rule 3.4.

Accordingly, the Committee concluded that Rule 3.4 does not permit the Judicial Official to serve as a member of the board of a directors of a foundation established pursuant to C.G.S. § 4-37e, which does not concern the law, the legal system, or the administration of justice.

IV. The meeting adjourned at 9:44 a.m.