

**Committee on Judicial Ethics**  
**Regular Meeting**  
**Thursday, September 17, 2020**

Committee members present via teleconference: Judge James T. Graham (Chair), Judge Robert B. Shapiro, Judge Vernon D. Oliver, Professor Carolyn W. Kaas, Judge Karen Goodrow (alternate) and Judge Michael P. Kamp (at 9:44 a.m.). Staff present: Attorney Viviana L. Livesay.

**MINUTES**

- I. Judge Graham called the meeting to order at 9:32 a.m. Although publicly noticed, no members of the public were present.
- II. Judge Shapiro made a motion to approve the minutes of the February 20, 2020 regular meeting. Judge Goodrow seconded. Judges Graham, Shapiro, Oliver, Goodrow and Professor Kaas approved the minutes.

Judge Oliver made a motion to approve the minutes of the June 5, 2020 special meeting. Professor Kaas seconded. Judges Graham, Oliver, Goodrow and Professor Kaas approved the minutes. Judge Shapiro abstained.

- III. The Committee discussed **Informal JE 2020-04** concerning whether a Judicial Official may provide a letter of recommendation to the Governor's Legal Counsel at the request of the candidate who is seeking judicial appointment. The candidate is not a relative.

The Judicial Official is seeking clarification of this Committee's advisory opinion in [JE 2011-19](#) (a judge should not voluntarily recommend or suggest the name of a judge for higher judicial office to the Governor's Legal Counsel but may serve as a reference for a judge and, if requested by the Legal Counsel, may provide a recommendation, by letter or otherwise, subject to two conditions). The inquiring Judicial Official asks whether it is permissible for him/her to provide a letter of recommendation at the request of the candidate, rather than at the request of the Governor's Legal Counsel.

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 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." The Commentary to Rule 1.3 states, in relevant part, as follows:

(2) A Judge may provide a reference or recommendation for an individual based on the judge's personal knowledge....

(3) Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

Rule 3.2 of the Code states that a judge "shall not appear voluntarily at a public hearing before or otherwise consult with, an executive or a legislative body or official, 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."

The general rule among the various advisory committees allows judges to furnish a letter of recommendation or act as a reference for persons seeking employment, appointment to the bench, admission to the bar and similar situations. To ensure that the prestige of office is not being exploited, there are exceptions to the rule (i.e., based on personal knowledge, familial conflict-of interest prohibition, cannot promote an individual's business interests, recipient is or is likely to be engaged in litigation before the judge, etc.)

The propriety of furnishing letters of recommendations or serving as a reference for a candidate seeking judicial appointment has been addressed by this Committee in a few of its prior informal opinions, most notably in: [JE 2008-10](#) (responding to a request from the Judicial Selection Commission requesting a letter of reference for a relative), [JE 2011-01](#) (being listed as a reference by an attorney on the Judicial Selection Commission application) and [JE 2011-19](#).

The Committee's opinion in [JE 2011-19](#) is particularly illustrative. In JE 2011-19, the Committee determined that a judge should not voluntarily recommend or suggest the name of a judge for higher judicial office to the Governor's Legal Counsel but may serve as a reference for a current judge and, if requested by the Legal Counsel, may provide a recommendation, by letter or otherwise, subject to the following conditions:

1. The Judicial Official's recommendation should be based on the Judicial Official's personal knowledge of the candidate's qualifications. If the Judicial Official's recommendation is furnished in writing on official letterhead, the Judicial Official should indicate that the recommendation constitutes the

Judicial Official's personal opinion of the candidate's qualifications. See Rule 1.3 comment 2.

2. The Judicial Official should disclose to the Governor's Legal Counsel or appointing authority any familial or material personal relationship that the Judicial Official has to the candidate. See Rule 1.2 (judge must act at all times in a manner that promotes public confidence in the integrity of the judiciary); Conn. Gen. Stat. § 51-39a (familial conflict-of-interest prohibition).

At issue in [New York Advisory Opinion 02-26](#) was the propriety of writing a letter of recommendation encouraging an appointing authority to appoint an attorney to a quasi-judicial vacancy. The opinion states:

We conclude that it would be inappropriate for a judge to voluntarily recommend to an appointing authority, that an individual be appointed to a quasi-judicial vacancy. Should the appointing authority contact the judge, it would not be inappropriate for the judge to set forth his or her observations concerning the abilities of the candidate in relation to the position sought. Under no circumstances should the judge recommend that the appointment be made. ([NY 02-26](#); see also [NY 15-173](#)).

Based upon the information provided and consistent with the Committee's prior opinions and New York Advisory Opinion 02-26, the Committee unanimously determined that the Judicial Official should not provide a letter of recommendation to the Governor's Legal Counsel at the request of the candidate. However, the Judicial Official may be listed as a reference for the candidate and, if requested by the Governor's Legal Counsel, may provide a written or oral recommendation, subject to the conditions set forth in [JE 2011-19](#).

- IV. New business – None.
- V. The meeting adjourned at 9:51 a.m.