

Committee on Judicial Ethics
Teleconference
Wednesday, October 3, 2012

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

MINUTES

- I. With the above noted Committee members present, Justice Schaller called the meeting to order at 9:31 a.m. Although publicly noticed, no members of the public were in attendance.
- II. The Committee members present unanimously approved the Minutes of the September 21, 2012 meeting.
- III. The Committee discussed Informal JE 2012-28 concerning whether a Judicial Official may accept an appointment¹ to serve on the community advisory board of a nonprofit, non-law-related division within a higher education institution?

Neither the particular division nor the institution is “concerned with the law, the legal system or the administration of justice” within the meaning of Rule 3.7. The advisory board serves as a sounding board for the division’s director with respect to programming and administrative issues and focuses on projects related to fund-raising, promotion and recruitment of students, and community-building. The educational institution has been a party to, on average, three new lawsuits a year for the past six years in the court of which the inquiring Judicial Official is a member.

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.” The rule’s commentary observes that “judges are permitted and encouraged to engage in educational ... or civil extrajudicial activities not conducted for profit, even when the activities do not involve the law.” Rule 3.1, cmt. (1). Among the restrictions set forth in Rule 3.1 are participating in activities that interfere with the proper performance of judicial duties, lead to frequent disqualification, appear to a reasonable person to undermine the

¹ The institution’s website notes that Board members are elected; however, the organization advised that Board members are appointed.

judge's independence, integrity or impartiality, or appear to a reasonable person to be coercive.

Rule 3.7(a)(6) provides that, subject to Rule 3.1, a judge may serve as a director or nonlegal advisor of a non-profit educational or civic organization, unless it is likely that the organization "will be engaged in proceedings that would ordinarily come before the judge" or "will frequently be engaged in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member." Rule 3.7 does, however, limit the types of activities that a judge may participate in with respect to a non-profit educational or civic organization. For example, Rule 3.7(a)(2) permits a judge to solicit contributions for such an organization but only from members of the judge's family or from judges over whom the judge does not exercise supervisory or appellate authority. Similarly, Rule 3.7(a)(3) permits a judge to solicit membership for such an organization, even if the membership dues or fees generated may be used to support the objectives of the organization, but only if the organization is concerned with the law, the legal system or the administration of justice.

Based upon the information provided, including that the advisory board is for a division of a nonprofit educational institution that is not concerned with the law, the legal system or the administration of justice, that the entity is not frequently involved in litigation in Connecticut courts, and that service on the advisory board would not interfere with the performance of judicial duties, the Committee members unanimously concluded that the Judicial Official may serve on the advisory board subject to the following conditions:

- 1) The Judicial Official should regularly reexamine the activities of the advisory board to determine if it is proper to continue his or her relationship with the advisory board. Rule 1.2;
- 2) The Judicial Official may not use Judicial Branch resources for activities that concern the advisory board. Rule 3.1(5);
- 3) The Judicial Official may not continue to serve on the advisory board if the institution participates in activities that lead to frequent disqualification of the Judicial Official or otherwise becomes frequently engaged in adversary proceedings in the court on which the Judicial Official serves. Rules 3.1 & 3.7(a)(6);
- 4) The Judicial Official may assist the organization in planning related to fund-raising and may participate in the management and investment of its funds. Rule 3.7(a)(1);
- 5) The Judicial Official may solicit contributions for the organization, but only from members of the Judicial Official's family (as that term is defined in the Code) or from Judicial Officials over whom the soliciting Judicial Official does not exercise supervisory or appellate authority. The Judicial Official may not engage in a general solicitation of funds on behalf of the organization. Rule 3.7(a)(2);

- 6) The Judicial Official may appear or speak at, be featured on the program of, and permit his/her title to be used in connection with an organization event, but not if the event serves a fund-raising purpose. Rule 3.7(a)(4); and
 - 7) The Judicial Official may permit his/her name and position with the organization to appear on letterhead used by the organization for fund-raising or membership solicitation but may permit his/her judicial title to appear on such letterhead only if comparable designations are used for other persons. Rule 3.7, cmt (4).
- IV. The meeting adjourned at 9:50 a.m.