

Committee on Judicial Ethics
Teleconference
Thursday, December 18, 2014

Members present via teleconference: Judge Christine E. Keller, Chair, Judge Maureen D. Dennis, Vice Chair, Judge Barbara M. Quinn, Professor Sarah F. Russell and Judge Angela C. Robinson. Staff present: Attorney Martin R. Libbin, Secretary and Attorney Viviana L. Livesay, Assistant Secretary.

MINUTES

- I. With the above noted Committee members present, Judge Keller 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 approved the minutes of the November 20, 2014 meeting.
- III. The Committee discussed **Informal JE 2014-22** concerning whether a Judicial Official may serve on an advisory board for a non-law-related school within a nonprofit higher education institution.

Neither the particular school nor the institution is concerned with the law, the legal system or the administration of justice. The advisory board does not have any fiduciary authority or have any role in the governance of the school; its role is solely advisory. The advisory board members assist the dean in carrying out the school's mission, goals and objectives, actively participate in meetings, including raising ideas and issues of concern, serve on various committees or task forces, assist in obtaining financial support for the school through personal commitment and fundraising activities, as appropriate, serve as advocates and ambassadors for the school with alumni, business, governmental and other organizational leaders, parents and the community, assist in the recruitment, retention, career development, professional placement and educational experiences of students, and attend and participate in school sponsored activities. Advisory board members are asked to provide financial support. The funds are placed into an advisory board fund and allocated in accordance with the recommendations of the advisory board. In the past, the advisory board has been asked to provide input on, inter alia, the propriety of merging various academic departments, fundraising ideas, the school's strategic plan and marketing efforts, creation of an alumni award, vetting nominations for such an award, and selection of awardees. In the future, the advisory board is expected to provide input on what can be done to better prepare students for careers, how to attract more students, and how

to engage more alumni, including having alumni return to campus to discuss their career experiences with students.

For the past 10 years the educational institution has been a party to, on average, a couple of new lawsuits a year in the court of which the inquiring Judicial Official is a member.

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 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 3.7 of the Code deals specifically with participation with educational, religious, charitable, fraternal and civic organizations and activities. It provides that, subject to the general requirements in Rule 3.1, a judge may participate in activities sponsored by or on behalf of educational organizations not conducted for profit including, but not limited to “(a)(2) soliciting contributions for such an organization or entity, but only from members of the judge’s family, or from judges over whom the judge does not exercise supervisory or appellate authority; (a)(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity but only if the organization or entity is concerned with the law, the legal system, or the administration of justice ... (a)(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity: (A) will be engaged in proceedings that would ordinarily come before the judge; or (B) 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.”

Based upon the facts presented, the Committee unanimously determined that the inquiring Judicial Official may serve on the advisory panel and any committees or task forces 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 not engage in a general solicitation of funds on behalf of the organization. Rule 3.7(a)(2). The Judicial Official only may solicit contributions for the organization 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. 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).
8. Service on the advisory board may not interfere with the proper performance of judicial duties. Rule 3.1(1); and
9. The Judicial Official may not solicit students to attend the school, as that is the functional equivalent to soliciting membership in an organization that is not concerned with the law, the legal system or the administration of justice. Rule 3.7(a)(3).

In reaching its decision, the Committee considered its prior opinion in [JE 2012-28](#) (Judicial Official may accept an appointment to serve on the community advisory board of a nonprofit, non-law-related division of a higher education institution, subject to various conditions).

- IV. The Committee ratified **Emergency Staff Opinion JE 2014-23** concerning whether a Judicial Official may serve on the interview panel for the selection of a municipal corporation counsel.

The municipality has a significant number of pending court cases in Connecticut, involving a variety of legal issues (i.e. foreclosures, defective premises, motor vehicle accidents, false arrest, etc.).

Rule 1.2 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 states “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.” Comments (2) and (3) to Rule 1.3 state 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 by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

Rule 2.11(a) states that a judge “shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned”

Rule 3.4 states that a judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it concerns the law, the legal system, or the administration of justice. In JE 2011-02, this Committee determined 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.’”

While this Committee has not previously issued opinions concerning the propriety of a Judicial Official sitting on an interview panel, it has issued many opinions regarding the propriety of providing a recommendation.

Given that the interview panel that the inquiring Judicial Official would serve on would make a recommendation concerning the best candidate for the position of corporation counsel, the Committee's opinions regarding providing a reference or letter of recommendation, or providing a performance evaluation, are highly relevant to the current inquiry.

In [JE 2009-15](#) at issue was the propriety of a Judicial Official providing references which essentially consisted of performance evaluations in response to form questionnaires for attorneys seeking contracts with the Commission on Child Protection to provide representation to children and indigent respondents in neglect and termination of parental rights proceedings in juvenile court. This Committee summarized its prior opinions in which it found that it was permissible for a Judicial Official to provide a reference or letter of recommendation. With respect to those activities, three of the conditions precedent to a Judicial Official serving as a reference or providing a letter of recommendation were that (1) the Judicial Official have personal knowledge of the candidate's qualifications relevant to the job, (2) neither the candidate nor the hiring authority have cases pending or appearances before the judicial official at the time of the recommendation or for a reasonable period of time after submission of the recommendation, and (3) if the Judicial Official believed that recusal would be required in order to comply with the prior condition, and that recusal is likely to be frequent, the Judicial Official should not provide the reference or letter of recommendation.

More recently, in [JE 2013-32](#), this Committee considered the propriety of a Judicial Official authorizing his or her name to be included as a reference by an Executive Branch employee who was applying for a position with a second Executive Branch agency. The employee or his or her agency regularly appeared before the Judicial Official. The Committee noted that generally it has concluded that a Judicial Official may provide references or recommendations subject to the following conditions:

- (1) The recommendation should be based on personal knowledge of the applicant's qualifications (see Rule 1.3 comment 2);
- (2) The applicant is not a relative within the meaning of the Code or General Statutes § 51-39a;
- (3) If the recommendation is furnished in writing on official letterhead, the Judicial Official should indicate that the recommendation constitutes the Judicial Official's personal opinion (see Rule 1.3 comment 2);
- (4) Persons/entities receiving the recommendation do not have cases pending before the Judicial Official at the time the recommendation is provided or for a reasonable period of time after the submission of the

letter of recommendation; however, in JE 2012-27, the Judicial Official was permitted to provide a letter of recommendation for an applicant for a supervisory position in the Office of Public Defender Services even though the Public Defenders appeared before the Judicial Official, although the applicant did not appear and was not likely to appear if he or she received the new position;

(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 provide the letter of recommendation;

(6) The letter should be specific to the position being sought (see [JE 2008-26](#));

(7) The Judicial Official may not provide a recommendation in adversarial proceedings (see [JE 2008-15](#)); and

(8) The Judicial Official may not provide a recommendation in connection with government employment that might suggest inappropriate political activity, but may be listed as a reference (see [JE 2009-13](#) & [JE 2011-19](#)).

On the facts presented in JE 2013-32, the Committee advised the Judicial Official not to consent to the use of his or her name as a reference.

In addition to the foregoing opinions, this Committee has issued opinions regarding providing an evaluation of an attorney to an attorney rating organization. In [JE 2013-40](#), the Committee determined that a Judicial Official may provide a reference for a law firm that had represented the Judicial Official in a matter subject to the following conditions:

(1) The Judicial Official has personal knowledge of the law firm's qualifications that are relevant for inclusion in the Chambers guide;

(2) No member of the law firm is 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) No member of the law firm has an appearance before the Judicial Official at the time of the interview or for a reasonable period, under the circumstances, before or after the interview; 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 agree to serve as a “referee.”

In JE 2013-40, the Committee distinguished its prior opinion involving a peer review rating for Martindale-Hubbell on the basis that such ratings were not confidential.

Based upon the facts presented, the Judicial Official was advised that serving on the interview panel for a municipal corporation counsel is inconsistent with Rules 1.2 and 1.3 because the Judicial Official would not have personal knowledge of all applicants and the municipality has a significant number of pending cases. In addition, the interview panel for a municipal corporation counsel is not a governmental commission concerned with the law, the legal system or the administration of justice as that term has been defined by the Committee and therefore service on the panel is prohibited by Rule 3.4.

- V. The Committee discussed **Informal JE 2014-24** concerning whether a Judicial Official may serve on an advisory board for a particular program of studies at a nonprofit educational institution.

For the last several years, a recently appointed Judicial Official has taught a law-related college course. (Teaching now occurs outside court hours.) The nonprofit educational institution has invited the JO to become part of an advisory board related to the program of studies taught by the JO. The JO would like to serve on the Board and indicated that he/she would make it clear that he/she could not do any fund raising while a member of the board. The JO believes that his/her name would probably appear on college stationery promoting the program, unless the JO stipulated otherwise.

The invitation letter from the institution states: "We would like someone from the legal profession to serve on our Advisory Board. This would involve attending perhaps one annual meeting to perform the following functions: review the progress of our program, observe activities conducted by current ... students, analyze projects underway and make suggestions for future directions in the program. We may also ask you for your written support as we apply for grant money to fund certain aspects of the program. As we plan our next meeting of the group, I write to ask now if you are interested in participating with us on this ... Advisory Board. If you wish to serve, please send me a letter of agreement on appropriate letterhead that we may keep on file and use as appropriate. If, on the other hand, you feel that there is another individual in the legal profession locally that might be a more appropriate person to serve on this board, please supply us with the name and contact information for that person. Thank you very much for your time and your commitment"

According to the Judicial Branch's Case Lookup, the educational institution has been a party to five lawsuits, over the past ten years, in the court of which the inquiring Judicial Official is a member.

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 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, (4) appear to a reasonable person to be coercive or (5) make use of court premises, staff, stationery, or other resources, except for incidental use.

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

(a)(1) assisting such an organization or entity in planning related to fund-raising and participating in the management and investment of the organization's or entity's funds;

(a)(2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority;

(a)(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; ...

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

(a)(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(A) will be engaged in proceedings that would ordinarily come before the judge; or

(B) 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.”

Based on the facts presented, including that the institution is not frequently involved in litigation and participation involves attending one annual meeting, the Committee unanimously determined that the Judicial Official may serve on the advisory board for a particular program of studies, 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 not engage in a general solicitation of funds on behalf of the organization. Rule 3.7(a)(2). The Judicial Official only may solicit contributions for the organization 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;
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);

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); and
8. The Judicial Official may not issue letters of support to any public or private fund-granting organization. Rule 3.7(a)(5).

In reaching its decision, the Committee considered its prior opinion in [JE 2012-28](#) (Judicial Official may accept an appointment to serve on the community advisory board of a nonprofit, non-law-related division of a higher education institution, subject to various conditions).

- VI. The meeting adjourned at 9:47 a.m.