

Committee on Judicial Ethics  
Teleconference  
Thursday, May 8, 2014

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Christine E. Keller, Vice Chair, Judge Maureen D. Dennis, Judge Barbara M. Quinn and Professor Sarah F. Russell. 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 9:33 a.m. Although publicly noticed, no members of the public were in attendance.
- II. The Committee members present approved the minutes of the April 22, 2014 meeting.
- III. The Committee discussed **Informal JE 2014-05** concerning whether a Judicial Official may continue to serve on the board of directors of a governmental organization, to which he or she was appointed by the Governor prior to his or her judicial appointment, that uses state funds to provide grants to historical societies, museums, and other cultural organizations in order to support the humanities.

The Judicial Official currently serves on a search committee of the governmental organization which is considering and interviewing applicants for the position of Executive Director. The Judicial Official has not participated in any board business since the Judicial Official's swearing in as a judge. The Judicial Official has suspended all activities on the board, including the search committee, pending an opinion from this Committee.

The stated mission of the governmental organization is "to use the power of the humanities to nurture curious minds, sustain cultural literacy, strengthen community ties, and explore common threads among Connecticut's diverse people. We believe this work is essential to a democratic society, to the well-being of the people of Connecticut, and to the economic vitality of our state."

Canon 1 states that "A Judge Shall Uphold and Promote the Independence, Integrity, and Impartiality of the Judiciary, and Shall Avoid Impropriety and the Appearance of Impropriety."

Rule 1.2, Promoting Confidence in the Judiciary, states as follows:

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. 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.

Comment (1) to the above Rule states that "Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety as defined in this Rule. This principle applies to both the professional and personal conduct of a judge."

Rule 3.1 provides, in relevant part, as follows:

A judge may engage in extrajudicial activities, except as prohibited by law. However, when engaging in extrajudicial activities, a judge shall not:

- (1) participate in activities that will interfere with the proper performance of the judge's judicial duties;
- (2) participate in activities that will lead to frequent disqualification of the judge;
- (3) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;

...

Comment (1) to the above Rule provides that to the extent that time permits and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. The Comments note that judges are uniquely qualified "to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice" and goes on to note that can be done "such as by speaking, writing, teaching ...." Comment (2) to the above Rule notes that participation in extrajudicial activities helps integrate judges into their communities and furthers public understanding and respect for the courts and judicial system.

Rule 3.2, which governs appearances before governmental bodies and consultations with government officials provides, in relevant part, as follows:

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; ....

The Comments to the above sections of Rule 3.2 state:

(1) Judges possess special expertise in matters of law, the legal system, and the administration of justice and may properly share that expertise with governmental bodies and executive or legislative branch officials.

(2) In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests; Rule 2.10, governing public comment on pending and impending matters; and Rule 3.1 (3), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

Rule 3.4, which concerns appointments to governmental positions, states as follows:

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.

Comment (1) to the foregoing Rule states as follows:

Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

As noted in Rule 3.4, Judicial Officials generally are permitted to serve on governmental boards, commissions, committees or other positions if the board, commission, etc. is one that concerns the law, the legal system, or the administration of justice. However, even as to such positions, service is prohibited if it would result in an appearance of impropriety (Rule 1.2), convey the impression that the commission is in a position to influence the Judicial Official's conduct or judgment (Rule 2.4), interfere with the proper performance of judicial duties (Rule 3.1), or cast reasonable doubt on the Judicial Official's capacity to act impartially or otherwise violate the Code.

This Committee has addressed the issue of law-related governmental commissions in several of its prior opinions: [JE 2008-24](#) (a Judicial Official should not serve on a governmental commission that is concerned with issues of fact or policy matters rather than improvement of the law, the legal system or the administration of justice); [JE 2011-02](#) (a Judicial Official should not serve on a governmental advisory committee that does not concern the law, the legal system or the administration of justice); [JE 2011-03](#) (a Judicial Official should not serve on a governmental advisory committee that does not concern the law); [JE 2011-04](#) (a Judicial Official should not serve on an ad-hoc advisory committee that does not concern the law); [JE 2011-05](#) (a Judicial Official should not serve on an ad-hoc advisory committee that does not concern the law); [JE 2011-15](#) (Rule 3.4 does not permit a Judicial Official to serve on the board of 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) and [Formal Advisory Opinion JE 2011-21](#) (a Judicial Official may serve on the Connecticut Sentencing Commission provided that Judicial Official re-evaluates the propriety of participation in the event of statutory changes to the composition and mission of the Commission).

The propriety of the Judicial Official's participation on the board of directors of the governmental organization depends on the answers to two questions: (1) does the work of the organization concern "the improvement of the law, the legal system, or administration of justice"? and, if so, (2) would participation on the organization undermine a judge's independence, integrity, or impartiality?

The first question involves an assessment of the organization's work to determine whether or not it is a legal system-related government commission that is appropriate for judicial membership, pursuant to Rule 3.4. In prior opinions issued by this Committee, the majority 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 courts go about their business." 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.” Applying the “direct nexus” standard to the facts presented by this inquiry, the Committee determined that the mission and the activities of this governmental organization fails to fall within the scope of the legal system-related exception to Rule 3.4.

Although in light of this determination, the Committee need not reach the second question, the Committee noted that the Judicial Official’s participation, including awarding State grants to a wide variety of organizations, would be likely to undermine the judge’s independence, integrity or impartiality or to create an appearance of impropriety (Rule 1.2). Further, attendance at meetings of this board, which routinely take place during court hours, could violate Rule 3.1’s proscription against engaging in activities that interfere with the proper performance of judicial duties.

Based upon the facts presented and consistent with this Committee’s prior opinions, the Committee unanimously determined that the continued service by the Judicial Official on the board of the governmental organization is prohibited by Rule 3.4 of the Code of Judicial Conduct, which 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.”

IV. The meeting adjourned at 9:40 a.m.