

Committee on Judicial Ethics
Teleconference
Thursday, May 18, 2017

Committee members present via teleconference: Judge Christine E. Keller (Chair), Judge Maureen D. Dennis (Vice Chair), Professor Sarah F. Russell and Judge Robert B. Shapiro. Staff present: Attorney Viviana L. Livesay (Assistant Secretary).

MINUTES

- I. Judge Keller called the meeting to order at 9:31 a.m. Although publicly noticed, no members of the public were present.
- II. The Committee members present approved the minutes of the December 15, 2016 regular meeting.
- III. The Committee ratified **Emergency Staff Opinion JE 2017-01**. Facts and issues: A lawyer in a highly contested case is pregnant and members of the bar are hosting a baby shower in her honor. (1) May the Judicial Official, presiding over the contested case, attend the baby shower and give a gift? (2) May court staff, including the Judicial Official's courtroom clerk and court reporter/monitor, attend the shower and give a gift?

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 2.11 states that a judge "shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned".

Rule 2.12 (a) states that a judge "shall take reasonable measures to ensure that court staff, court officials, and others subject to the judge's direction and control act in a manner consistent with the judge's obligations under this Code."

Rule 3.1 states that a judge may engage in extrajudicial activities, except as prohibited by law, however, a judge shall not participate in activities that (1) will 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 or resources except for incidental use or for activities that concern the law, the legal system or the administration of justice, or the use is permitted by law.

Rule 3.13 states that a judge shall not accept a gift if its acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The rule notes that unless otherwise prohibited, a judge may accept items of little intrinsic value, gifts or other things of value "from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.1", as well as permitting a gift as part of ordinary social hospitality.

This inquiry was circulated to the Committee members and their input was solicited and received. The Committee has issued several prior opinions regarding a Judicial Official's receipt of a gift; however, the inquiry in this instance is the propriety of giving a gift. Unlike the explicit rules for acceptance of a gift or other things of value set forth in Rule 3.13, and the related rule for when disclosure is required for such gifts (see Rule 3.15), there are no explicit rules on the giving of gifts. While the general guidance provided in Rule 1.2 to promote public confidence in the impartiality of the judiciary and to avoid impropriety and the appearance of impropriety provides some guidance, the Committee agreed that the rules regarding the receipt of gifts should also apply to the giving of a gift.

In [JE 2008-04](#), this Committee determined that a Judicial Official could attend a sold-out baseball game as the guest of an attorney friend using tickets obtained by the attorney's law firm where the Judicial Official would pay for the ticket, the attorney friend would be the only person from the firm present with the Judicial Official, there were not frequent transactions between the firm and the Judicial Official, the friend had not appeared before the Judicial Official, and the firm was not currently before the Judicial Official but had appeared in the past and was expected on occasion to appear in the future.

In [JE 2008-05](#), this Committee determined that a Judicial Official could be a guest of the Judicial Official's spouse's client at an expensive charity event where neither the client nor the client's business had matters before the court and the gift was reported in the same manner as compensation.

In [JE 2008-09](#), this Committee determined that a Judicial Official could accept tickets to a charity event and dinner if the gift was reported and neither the donor lawyer nor the donor lawyer's firm had interests that had come or were likely to come before the Judicial Official.

In [JE 2012-03](#), this Committee determined that a Judicial Official who was marrying an attorney employed in a non-supervisory role of a large governmental law office, was permitted to accept wedding gifts from the spouse's co-workers as part of ordinary social hospitality even though the spouse's unit occasionally appeared in cases before the Judicial Official. The Judicial Official was advised to disclose to all parties the marital relationship in any case in which an attorney

from the spouse's unit appears before the Judicial Official and to inquire if the spouse had any involvement in the case.

In [JE 2015-23](#), this Committee determined that a Judicial Official could attend a large annual holiday party hosted by a law firm, which invited hundreds of people, including opposing counsel, judges, politicians, etc. subject to various conditions including "The law firm hosting the party is not actively engaged in litigation or proceedings before the Judicial Official".

In [JE 2013-09](#), the Committee determined that a newly confirmed Judicial Official could accept a gift from the Judicial Official's former state office as part of ordinary social hospitality unless the value of the gift was so great that a reasonable person would believe that the gift would undermine the Judicial Official's independence, integrity or impartiality; however, the Judicial Official was required to disclose his or her prior employment with the state office for a period of at least two years.

In [JE 2012-17](#), this Committee determined that a Judicial Official who officiated at a wedding could attend a dinner following the ceremony as a guest of the wedding party as part of ordinary social hospitality. The opinion noted that neither the bride nor the groom was a lawyer, litigant or person likely to appear before the Judicial Official nor were they relatives within the meaning of the Code of Judicial Conduct.

As noted above, the Committee agreed that the rules for receipt of a gift by a Judicial Official should serve as a guide for gifts that a Judicial Official can give. The foregoing opinions generally indicate that when a person is before a Judicial Official, the Judicial Official may not accept a gift from that individual.

Based upon the foregoing, the Judicial Official was advised that he or she should not provide a gift to the attorney and should not attend the shower. The Judicial Official was further advised that, pursuant to Rule 2.12, the courtroom clerk and court reporter/monitor, assigned to work under his or her supervision on the contested case involving the pregnant attorney, should not attend or give a gift if the case is still pending while the shower takes place, but that other staff may attend. One Committee member noted that in some courthouses, judges have a different monitor in the courtroom every week or even daily. If this is the case in the Judicial Official's situation, he or she should advise the monitor/reporter supervisor.

IV. The meeting adjourned at 9:33 a.m.