

Committee on Judicial Ethics
Teleconference
Thursday, September 21, 2017

Committee members present via teleconference: Judge Maureen D. Dennis (Chair), Professor Sarah F. Russell, Judge Angela C. Robinson and Judge James T. Graham (Alternate). Staff present: Attorney Viviana L. Livesay (Assistant Secretary) and Attorney Adam P. Mauriello (Assistant Secretary).

MINUTES

- I. Judge Dennis called the meeting to order at 9:34 a.m. Although publicly noticed, no members of the public were present.
- II. Judges Dennis, Robinson and Graham and Professor Russell approved the minutes of the August 17, 2017 regular meeting.
- III. The Committee ratified **Emergency Staff Opinion JE 2017-11** concerning whether a Judicial Official may (1) make a monetary donation to, and/or (2) purchase a ticket and attend a fund-raising event hosted by the New Haven Family Alliance.

The NHFA is a non-profit organization whose mission is “to foster family well-being by strengthening parent's ability to provide healthy nurturing environments for their children and by providing supports for children and youth so that they thrive emotionally, socially, academically and spiritually.” Key issues for the NHFA include supporting non-custodial fathers and single mothers, improving children's outcomes and helping families improve their economic status through living wage employment and financial literacy. See NHFA’s website at: <http://www.nhfamilyalliance.org/mission>. In the course of his or her official duties, the Judicial Official regularly refers court-involved male child support obligors to the NHFA’s Male Involvement Network, which according to the NHFA’s website is a program intended “to help prepare fathers to meet the emotional, social and financial needs of their children.” The Male Involvement Network is funded in part by a grant from the Department of Social Services pursuant to the John F. Martinez Fatherhood Initiative. See General Statutes § 17b-27a. The official website for the Fatherhood Initiative lists the NHFA as a community-based partner, see <http://www.ct.gov/fatherhood/cwp/view.asp?a=4113&q=481588>. The NHFA does not contract directly with the Judicial Branch.

The Judicial Official stated that there are other, similar programs that are available to the court for referrals, but described the NHFA as the most active and consistent of the programs available. Occasionally, an employee of the NHFA will provide testimony as to the child support obligor's attendance and compliance with the program; however, according to the Judicial Official, testimony generally is not necessary and reports to the court can be made by

correspondence or through the local Support Enforcement office. It does not appear as though the NHFA is a party to any civil actions in Connecticut.

According to the Judicial Official, funding for all Fatherhood Initiative programs has been threatened by the ongoing budget crisis. The fundraiser is intended to raise funds to enable NHFA to continue to offer the Male Involvement Network program. The cost to attend the event was \$20.

Rule 1.2 states that a judge “should 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.”

Rule 1.3 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.”

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

Rule 3.1 states in part that a judge “may engage in extrajudicial activities, except as prohibited by law.” The Rule goes on to note that when engaging in extrajudicial activities, the judge shall not participate, inter alia, in activities that will interfere with the proper performance of the judge’s judicial duties, lead to frequent disqualification, or appear to a reasonable person to undermine the judge’s independence, integrity or impartiality. Rule 3.1(1)-(3).

Rule 3.7 of the Code concerns a judge’s participation in educational, religious, charitable, fraternal, or civic organization and activities. Rule 3.7 states, in relevant part:

- (a) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities: ... (4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may

participate only if the event concerns the law, the legal system, or the administration of justice;....

Comment (2) to Rule 3.7 states that “[e]ven for law related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge’s participation in or association with the organization, would conflict with the judge’s obligation to refrain from activities that reflect adversely on a judge’s independence, integrity, and impartiality.”

Comment (3) to Rule 3.7 states in part that “[m]ere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of subsection (a)(4).”

This inquiry was circulated to the Committee members and their input was solicited and received. Although the Committee has not previously considered this precise issue, it has addressed attendance at fund-raising events and the interactions of judges with entities that are involved with the courts. In [JE 2012-30](#), the Committee considered whether a Judicial Official could make a donation, purchase a ticket and attend a fund-raising event hosted by the Children's Law Center ("CLC"). The CLC was a non-profit organization that provided legal representation and various other services to court-involved children. CLC lawyers regularly represented children in Connecticut state courts, and the CLC engaged in legislative advocacy at the state level. The Committee concluded that the Judicial Official could make a donation to the CLC, purchase a ticket and attend the fund-raising event, subject to several conditions.

Also relevant is [JE 2012-18](#), in which the Committee considered whether a Judicial Official could attend a luncheon meeting and accept a meal paid for by a non-profit Judicial Branch contractor. Although the Judicial Official did not typically make referrals to the contractor, he/she had the authority to do so, and the contractor's employees sometimes were required to testify in court with respect to the services provided to a client. In addition, the Committee observed that in some judicial districts, the contractor may have been the only entity available to provide certain court-ordered services. The Committee determined that the Judicial Official could attend the luncheon and accept the meal, subject to certain conditions.

Based on the facts presented and the above-referenced prior opinions of the Committee, the Judicial Official was advised that he/she may make a donation to the NHFA and may pay for admission to and attend an NHFA fund-raising event, subject to the following conditions:

- (1) The Judicial Official may make a donation to the NHFA, subject to the following conditions:

a. The Judicial Official should request and obtain adequate assurance from the organization that his or her identity as a donor will not be publicized and that his/her judicial title will not otherwise be used by the organization for promotional purposes. See Rule 1.3; and

b. For any future cases before the Judicial Official in which the NHFA is involved as a party or an NHFA employee appears as a witness, the Judicial Official should consider whether the timing, nature and size of any donation may trigger obligations of disqualification or disclosure under Rule 2.11. Specifically, the Judicial Official should consider the possibility that (i) the timing, nature and size of the donation creates an actual personal bias or prejudice under Rule 2.11(a)(1) requiring disqualification, or (ii) that the timing, nature and size of the donation would otherwise create in a reasonable mind an appearance that the Judicial Official would not be impartial, such that the Judicial Official either should recuse under Rule 2.11(a) or disclose and potentially seek remittal in accordance with Rule 2.11(c). In addition, no matter how small the donation, the Committee recommends in light of the Judicial Official's affirmative obligations under Rule 1.2 that the Judicial Official may wish to take the precautionary measure of disclosing the donation for a reasonable period of time following the donation in any case in which the NHFA appears as a party or an NHFA employee appears as a witness before the Judicial Official. The Judicial Official also should be mindful of the duty to avoid or minimize disqualifications as stated in Rule 3.1.

(2) The Judicial Official may pay for admission to and attend a fund-raising event hosted by the NHFA, subject to the following conditions:

a. The organization does not regularly engage in adversary proceedings before the Judicial Official. See Rule 3.1(2);

b. The Judicial Official complies with the conditions for the making of a donation as described above (because payment for admission to a fund-raiser amounts to a donation to the organization);

c. The Judicial Official's attendance at the event does not raise concerns about coercion of other potential donors or exploitation of the judicial office, and does not demean the office, cast doubt on the judge's impartiality, or interfere with the performance of judicial duties. See Rule 3.1;

d. The Judicial Official should not allow his/her title to be used in conjunction with the event (e.g., on name tags, by way of a public introduction, award or special recognition, such as sitting at a head table, etc.). See Rule 1.3;

e. If the NHFA appears before the Judicial Official as a party or an employee of NHFA appears before the Judicial Official as a witness within a reasonable period of time following the fund-raising event , the Judicial Official should disclose the fact that he/she attended an NHFA fund-raising event. See Rule 3.7; and

f. The Judicial Official should not discuss any pending or impending cases in any court. See Rule 2.10.

- IV. The Committee discussed **Formal JE 2017-12**. The two questions submitted are as follows: Does a Judicial Official have an obligation to report to the state’s attorney unreported allegations of possible sexual assaults disclosed during a restraining order application hearing? If there is no obligation to report under the Code of Judicial Conduct, does the Committee have an opinion as to whether the Judicial Official should do so?

Based on the facts presented, and consistent with this Committee’s opinion in [JE 2015-01](#), the Committee unanimously determined that there is no ethical requirement for the Judicial Official to report alleged criminal conduct by a litigant who appeared before the Judicial Official, although the Judicial Official is not prohibited from doing so. The Committee declined to advise whether the Judicial Official should do so on the facts presented; however, if the Judicial Official elects to report the alleged conduct to the appropriate authority, he/she should do so by sending a signed transcript, as recommended in [JE 2016-08](#).

Approval of the final version of the formal opinion letter will be considered at the next meeting.

- V. The Committee discussed **Informal JE 2017-13** concerning whether a Judicial Official, who serves on the board of a nonprofit civic organization that does not concern the law, the legal system or the administration of justice, may invite family, friends and acquaintances to a free event that is designed to introduce them to the organization’s goals.

According to the nonprofit’s website, the purpose of the organization is to recruit, carefully screen, and train caring adults to act as mentors to children. The nonprofit is comprised of volunteer mentors, board members, financial supporters, and partner agencies. There are no organizational “members”. Public outreach is primarily for additional mentor volunteers and mentors are never charged to participate in their programs. Around the holidays, the nonprofit sends out an email asking individuals to consider donating to the agency as part of their end-of-year giving and meets with certain organizations/individuals regarding their potential gifts.

No fundraising will occur at the free event, but the goal is to solicit contributions from the attendees at a later time. The Judicial Official would not participate in the subsequent solicitation of funds. At the end of the free event, the organization distributes copies of its annual report, which summarizes its work, and may provide information on how to become a mentor. No donation forms are distributed at any of the organization's free events.

According to the Judicial Branch's online "Case Look-Up," the organization has been a party to less than five cases in the past several years, only one of which is currently pending, and the Judicial Official is not assigned to the judicial district when the case is pending.

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 (a) 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 the following:

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

(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;

(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;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

(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

(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 civic organization is not concerned with the law, the legal system, or the administration of justice and that no fund-raising will occur at the event, the Committee determined that inviting family, friends, and acquaintances to a free program, with the intent to solicit contributions at a later time, is the functional equivalent to assisting an organization in planning related to fund-raising pursuant to Rule 3.7(a)(1). Therefore, the Committee concluded that the Judicial Official may invite individuals to the free program pursuant to Rule 3.7(a)(1) but may solicit contributions pursuant to Rule 3.7(a)(2) only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority.

VI. The meeting adjourned at 10:22 a.m.