

Committee on Judicial Ethics  
Teleconference  
Thursday, October 15, 2015

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

**MINUTES**

- I. With the above noted Committee members in attendance, Judge Keller called the meeting to order at 9:31 a.m. Although publicly noticed, no members of the public were present.
- II. Judges Keller, Dennis, Quinn, Corradino and Prof. Russell approved the minutes of the September 17, 2015 meeting at 9:32 a.m.
- III. Judge Robinson joined the teleconference at 9:33 a.m.
- IV. The Committee ratified **Emergency Staff Opinion JE 2015-18** concerning whether a Judicial Official serve as the Grand Marshal of a municipality's ethnic day parade.

The parade is not a fundraiser, but sponsors contribute funds to offset costs. The names of sponsors appear on banners. The Judicial Official's name would not be used in connection with soliciting sponsors. In addition, the Judicial Official would retain the right to review materials used to solicit contributions to fund the parade. The Judicial Official would ride in a car at the front of the parade with a banner denoting the Judicial Official as the Grand Marshal.

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 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 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 will interfere with the proper performance of judicial duties, lead to frequent disqualification or appear to a reasonable person to undermine the judge’s independence, integrity or impartiality.

Rule 3.7 concerns participation in educational, religious, charitable, fraternal, or civic organization and activities. Subject to the requirements in Rule 3.1, a judge is permitted to participate in various activities sponsored by or on behalf of such entities. Subject to the requirements in Rule 3.1, subsection (a)(4) specifically authorizes judges “appearing or speaking at, receiving an award or other recognition at, 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”.

This inquiry was circulated to the Committee members and their input was solicited and received. Based on the facts presented, including that the event is a community event and not a fund-raiser, that the Judicial Official’s name will not be used in connection with soliciting sponsors, and that the Judicial Official retains the right to review any material used to solicit contributions to fund the parade, the Committee agreed that the Judicial Official may serve as Grand Marshal in this community event.

In reaching its decision, the Committee considered [JE 2009-18 Emergency Staff Opinion](#) (judge may attend and speak at a non-political, non-fundraising, flag-raising ceremony to mark the beginning of an annual cultural celebration) and New York Advisory Committee on Judicial Ethics Opinion No. 04-144 (a judge may serve as the Grand Marshal of a St. Patrick’s Day Parade, and attend the annual fund-raising dinner held in conjunction with the parade, provided the judge’s name is not used in connection with any fund-raising activities or materials. Parade was considered to be a community event, not a fund-raising event, because there were no fund-raising activities engaged in as part of the parade); cf. New York Advisory Opinion No. 98-49 (judge should not serve as the grand marshal of a parade, or as a speaker at a rally held after the parade, where the organization sponsoring the event was engaged in fund-raising activities from its booth at the end of the parade route as well as other fund-raising activities prior to the parade).

- V. Judge Robinson exited the teleconference at 9:35 a.m.
- VI. The Committee members present discussed **Informal JE 2015-15B** concerning whether a Judicial Official may participate in the Boy Scouts of America ("BSA") by serving on the executive board of a regional council and on the Archdiocese of Hartford's Catholic Committee on Scouting. This was part of a continuing discussion from prior meetings.

**Additional Facts:**

July 27, 2015 BSA Resolution:

On July 27, 2015, the Boy Scouts of America's National Executive Board adopted a resolution which no longer excludes individuals on the basis of sexual identity or orientation from adult leadership positions, with the exception that religious chartered organizations may continue to use religious beliefs as criteria for selecting adult leaders. However, it is not an option for nonreligious chartered organizations.

Regional Council:

The Judicial Official indicated that the regional council has had a non-discriminatory statement for many years, does not vote on any unit charter applications or the selection of volunteers and is not involved in any unit funding decisions. According to the Judicial Official, the chartering organization and the unit itself are responsible for their own finances. As an executive board member on the regional council, the Judicial Official may be asked to vote on hires for council employees. The Judicial Official indicated that if he/she is asked to vote on hires, the sexual orientation of an applicant would have no bearing on how he/she votes on the regional council.

Catholic Committee on Scouting:

Catholic Scouting is a program offered by the Archdiocese's Office of Religious Education as a component of its Youth Ministry and receives guidance from the National Catholic Committee on Scouting (NCCS). Each diocesan bishop decides how scouting will be used in his diocese and may determine the method by which a committee is established.

According to a representative from the Hartford Archdiocese Catholic Committee on Scouting, the Catholic Committee is not involved in the hiring of employees or the selection of unit leaders. The Catholic Committee is involved in recruiting Catholic members, training counselors, holding retreats and promoting religious activities.

This Committee reviewed the information available on the National Catholic Committee on Scouting (NCCS) website: <http://www.nccs-bsa.org/index.php>, which included several documents pertaining to the July 27<sup>th</sup> BSA adult leadership standards: (1) May 22, 2015 letter from

NCCS to fellow Catholic Scouters, (2) July 8, 2015 BSA statement on why the BSA must reconsider the adult leader standards, (3) July 27, 2015 letter from NCCS to fellow Catholic Scouters, (4) two Bishop letters announcing the July 27<sup>th</sup> resolution, (5) legal memo provided by Hugh, Hubbard and Reed regarding the effect of the July 27<sup>th</sup> changes. (Documents included in [Appendix- 2015-15B](#)).

According to the NCCS website, the purpose of the Catholic Committee is as follows:

The purpose of the Catholic committee on Scouting is to give guidance, vitality and leadership in the spiritual phase of Scouting to all Catholic Scouts and Scouters of the diocese.

The committee endeavors to make the entire Scouting program available to increasing numbers of youths in parish units and in units operated by Catholic organizations.

The agenda of the Catholic committee supplements the program of the Boy Scouts of America, with special instructions and activities, in the spiritual phase of Scouting as it relates to Catholics.

The NCCS website also lists the responsibilities of the Catholic Committee:

1. Develop, schedule and carry out a youth ministry program for all Scouting units within the Catholic Church, which complements other BSA council or district activities as well as those of the parish and diocese.
2. Through publicity and other contacts, strive to reach all Catholic youths and Scouters in units not chartered to Catholic organizations to permit them to participate in activities conducted by the committee.
3. Schedule regular meetings, preferably quarterly, to carry out diocesan and national programs and activities.
4. Promote attendance at annual NCCS meetings by appropriate committee officers, and subcommittee chairmen, for representation, training and information.
5. Advise BSA councils within the diocese on all matters relating to Scouting among Catholics.
6. Assist local BSA councils in making unit organization contacts with all parishes and church-related societies and help in the establishment of units within these organizations.

Rule 1.2 of Connecticut's Code of Judicial Conduct states 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. 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(3) states that judges must ensure that their extrajudicial activities do not "appear to a reasonable person to undermine the judge's independence, integrity or impartiality." The rule's commentary encourages judges to engage in appropriate extrajudicial activities, to the extent that "judicial independence and impartiality are not compromised." The commentary provides further than judges are encouraged to engage in "educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law." Rule 3.1, cmt.(1).

Rule 3.6(a) specifically prohibits a judge's membership "in any organization that practices unlawful discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, physical or mental disability, or sexual orientation."

The issue of whether a judge can be affiliated with the Boy Scouts of America was considered by this Committee previously. In [JE 2014-01](#), this Committee unanimously concluded that a Judicial Official should not participate as a BSA adult volunteer in any of the four leadership positions being considered by the Judicial Official because the positions would be denied to gay candidates by policy of the BSA. In light of the fact that the four leadership positions being considered by the Judicial Official were positions that would be denied to gay candidates by policy of the BSA, the Committee determined that participation was not permissible because it might appear to a reasonable person to undermine the Judicial Official's independence, integrity or impartiality in violation of Rule 3.1(3).

Under the facts of this inquiry, the BSA policy at issue in JE 2014-01 is no longer in force. The newly adopted official position of the Boy Scouts of America is that nonreligious chartered organizations cannot exclude adult leaders on the basis of sexual orientation. However, the religious chartered organization is the judge of whether any adult volunteer leader possesses the "moral, educational and emotional qualities deemed necessary for leadership" (Amended and Restated Bylaws of the Boy Scouts of America, Article VIII, Section 1, Clause 1) and may continue to use religious beliefs as criteria for selecting adult leaders. Therefore, the distinction in this case is that gay adults may now hold leadership positions within the Boy Scouts of America, even though these individuals may still face exclusion by certain religious chartered organizations.

In order to determine whether participation of the Judicial Official on the executive board of a regional council and on the Archdiocese of Hartford's Catholic Scouting Committee is permitted in light of the new resolution, the Committee conducted the same two-prong analysis used in its prior opinion: (1) Whether the BSA engages in unlawful discrimination, and (2) Whether the Judicial Official's contemplated participation as an adult volunteer at the regional or higher level creates the appearance of impropriety or would appear to undermine the Judicial Official's impartiality.

The response to the first prong of the inquiry has not changed. Even under the pre-July 27<sup>th</sup> policy excluding gay adult leaders, the Committee determined that, under *Dale*, the Judicial Official's proposed volunteer work does not appear to be specifically prohibited under Rule 3.6, which only reaches organizations engaged in "unlawful discrimination."

With respect to the issue of whether participation as a BSA adult volunteer creates an appearance of impropriety or would appear to undermine the Judicial Official's impartiality, the Committee considered Connecticut's public policy against discrimination on the basis of sexual orientation and concluded that gay persons have a protected status under our state constitution and statutes. Given that judges are charged with enforcing Connecticut's laws prohibiting discrimination based on sexual orientation, the Committee determined that it would appear to undermine a Judicial Official's impartiality if the Official were to accept a position with an organization that the organization would, by policy, deny to another candidate on the basis of sexual orientation.

In the present inquiry, the Judicial Official is seeking leadership positions with two different organizations: a regional council and a Catholic Committee on Scouting. With respect to the Judicial Official's participation on the executive board of a regional council, since there is no longer a ban on gay adults from holding this type of leadership position, the prior concerns about a Judicial Official's impartiality are eliminated.

The Catholic Committee on Scouting, in contrast, is allowed to use religious beliefs as criteria for selecting adult leaders. The Catholic Committee appears to be *an* extension of the Catholic Church, existing to ensure the constructive use of the BSA program as a viable form of youth ministry with Catholic youth. It is a church committee, whose members are selected by the bishop (or his designee), comprised of concerned Catholic laypersons and clergy who act as advisors to the BSA on all matters relating to scouting among Catholics. Given the Catholic Committee's relationship to the church, the Committee determined that the Judicial Official's membership in a religious organization constitutes the lawful exercise of his or her First Amendment right to religious freedom.

Based on the facts presented, the Committee unanimously determined that the Judicial Official may participate in the Boy Scouts of America by serving as a board member of a regional council and as a member of the Archdiocese of Hartford's Catholic Committee on Scouting.

Notwithstanding the foregoing, the Committee members expressed prudential concerns about participating in policy-making decisions pertaining to gay individuals involving the content of ministry and training programs and the selection of adult volunteers or employees while serving on the Catholic Committee and suggested that the Judicial Official consider whether engaging in such policy-making activity risks creating the appearance of impropriety.

- VII. The next meeting of the Committee is scheduled for November 19, 2015.
- VIII. The meeting adjourned at 9:51 a.m.