



## Connecticut Committee on Judicial Ethics

### Informal Opinion Summaries

**2016-02 (March 17, 2016)**

**Disclosure/Disqualification; Attorneys; Rules 1.2 & 2.11**

**Background:** A Judicial Official is a party in a lawsuit. The Judicial Official is using the services of an attorney to prepare a document (QDRO) that is to be signed by both parties to the underlying litigation and then to be submitted to the court for its approval. The attorney preparing the document does not represent the Judicial Official in the underlying matter and will not be testifying in the Judicial Official's case. The attorney preparing the document has been retained by the Judicial Branch in the past to train judges about the subject matter for which the attorney is preparing the document.

**Issues:** Is a Judicial Official disqualified from presiding over the following matters and, if disqualification is not required, does a Judicial Official have a duty to disclose either that the attorney was used by the Judicial Official or that the attorney provided training to Judges?

1. The parties before the Judicial Official agree, without court involvement, that the attorney should prepare the type of document for their case that the attorney prepared in the Judicial Official's case, and thereafter the Judicial Official is asked to "so order" that the attorney prepare the document.
2. The attorney who prepared the document in the Judicial Official's case appears before the Judicial Official in a contested matter as a witness about the type of document that the attorney provided training to the Judges for and prepared in the Judicial Official's case.
3. The attorney who prepared the document in the Judicial Official's case appears before the Judicial Official as counsel, in a contested or uncontested matter, and the type of document either is or is not involved in the case before the Judicial Official.

**Relevant Code Provisions:** 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 2.11 (a) requires a judge to disqualify himself or herself "in any proceeding in which the judge's impartiality might reasonably be questioned", and Comment (1) to Rule 2.11, notes that "a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of subsection (a)(1) through (5) apply."

Rule 2.11 (c) states that a "judge subject to disqualification under this Rule, other than for bias or prejudice under subsection (a) (1), may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification, provided that the judge shall disclose on the record the basis of such disqualification."

**Response:** Based on the information provided, including that the Judicial Official is currently using the services of an attorney to prepare a QDRO in connection with his/her lawsuit, the Committee concluded the following:

1. The Judicial Official does not have a duty to automatically disqualify himself or herself when the parties before the Judicial Official agree, without court involvement, that the attorney should prepare the type of document for their case that the attorney prepared in the Judicial Official's case, and thereafter the Judicial Official is asked to "so order" that the attorney prepare the document. Given that the parties have agreed to use the services of the attorney without input from the Judicial Official and that the Judicial Official is simply approving their agreement, the Committee opined that it would be unlikely that a judge's impartiality might reasonably be questioned in this scenario. However, the

Judicial Official should disclose the nature of the judge's relationship to the attorney, both during the pendency of the Judicial Official's case and for a period of two years after it is fully concluded. Thereafter, if a motion to disqualify is filed, the Judicial Official must exercise his or her discretion in deciding the motion based upon the information provided in the motion and the accompanying affidavit, as provided for in Connecticut Practice Book § 1-23, as well as the particular circumstances of the case.

2. While the Judicial Official's action is pending and for two years after it is fully concluded, the Judicial Official is disqualified, subject to remittal under Rule 2.11 (c), when the attorney who prepared the document in the Judicial Official's case appears before the Judicial Official in a contested matter as a witness about the type of document that the attorney provided training to the Judges for and prepared in the Judicial Official's case. Disqualification is subject to remittal only if the judge has no personal bias or prejudice concerning the attorney and fully discloses on the record the basis for the disqualification.
3. While the Judicial Official's action is pending and for two years after it is fully concluded, the Judicial Official is disqualified, subject to remittal under Rule 2.11 (c), when the attorney who prepared the document in the Judicial Official's case appears before the Judicial Official as counsel, in a contested or uncontested matter, and the type of document either is or is not involved in the case before the Judicial Official. Disqualification is subject to remittal only if the judge has no personal bias or prejudice concerning the attorney and fully discloses on the record the basis for the disqualification.

In reaching its decision, the Committee considered: [Emergency Staff Opinion JE 2009-30](#) (a Judicial Official has a duty to recuse him/herself in a case where a party is represented by an attorney that the Judicial Official has retained in the past for a personal matter and whose spouse retains on an ongoing, ad hoc basis); [Emergency Staff Opinion JE 2012-08](#) (a Judicial Official should recuse himself/herself from participating in a pretrial conference involving a law firm that represented the Judicial Official in a pending arbitration matter where the law firm was retained by the Judicial

Official's insurer); and New York Advisory Opinion 15-08 (a judge who is being represented by counsel in a personal legal matter must disqualify him/herself when any attorney involved in the judge's representation appears before the judge, both during the representation and for two years after the matter is concluded. Disqualification is subject to remittal only if the judge believes he/she can be impartial and is willing to disclose fully that the attorney is representing the judge in a personal legal matter and the nature of the representation. The NY Committee also concluded that a similar standard should apply for experts who were involved in the legal action.)

[Connecticut Committee on Judicial Ethics](#)