



Connecticut Committee on Judicial Ethics

Informal Opinion Summaries

2016-04 (April 21, 2016)

Disclosure/Disqualification; Attorneys; Rules 1.2 & 2.11

Issue: Does the inquiring Judicial Official in [JE 2013-48](#) have a continuing duty to disclose that his/her relative (at the third degree of kinship) previously worked as an associate at a certain law firm and make the inquiries set forth in [JE 2013-48](#)? If the Judicial Official has a duty to disclose, how long does the duty continue after the relative leaves the firm?

Background: This inquiry was submitted by the inquiring Judicial Official in [JE 2013-48](#). According to the Judicial Official, the relative (at the third degree of kinship) who worked at a multi-office law firm in JE 2013-48, no longer works for the firm. At the time of that opinion, the Judicial Official was advised that based upon the facts presented, the Judicial Official was not automatically disqualified from presiding over cases involving the law firm subject to three conditions:

- 1) The Judicial Official had a duty to disclose on the record his or her relationship whenever the firm or any of its members appear before the Judicial Official, and inquire whether the relative was involved in any manner with the acquisition or representation of the client, or has more than a de minimis interest that could be substantially affected by the proceeding.
- 2) If the relative was involved in the acquisition or representation of the client, or has more than a de minimis interest that could be substantially affected by the proceeding, the Judicial Official should recuse him or herself or follow the procedure set forth in Rule 2.11(c) to request the parties to consider whether to waive the Judicial Official's disqualification.

- 3) If the relative had no involvement in the acquisition or representation of the client, and does not have more than a de minimis interest that could be substantially affected by the proceeding, the Judicial Official may preside over the case unless a motion for disqualification is filed and based upon the information provided in the motion and accompanying affidavit, as provided for in Connecticut Practice Book § 1-23, as well as the particular circumstances of the case, the Judicial Official determines that he or she should recuse him or herself.

Response: 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 2.4 states, in relevant part, that “(b) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment. (c) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge’s judicial conduct or judgment.”

Rule 2.11(a) states that a judge “shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned” Some of the specifically identified circumstances requiring disqualification are when the judge has a personal bias or prejudice concerning a party or a party’s lawyer or when the judge knows that the judge’s “spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is ... acting as a lawyer in the proceeding ... [or] a person who has more than a de minimis interest that could be substantially affected by the proceeding”. Rule 2.11(a)(1) and Rule 2.11(a) (2) (B) and (C). An additional circumstance requiring disqualification occurs when the judge knows that the judge, “individually or as a fiduciary, or the judge’s spouse, domestic partner, parent, or child, or any other member of the judge’s

family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding." Rule 2.11 (a) (3). Comment (4) to Rule 2.11 states as follows: "The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under subsection (a) or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under subsection (a) (2) (C), the judge's disqualification is required."

Rule 2.11 (c) states that a judge subject to disqualification under this Rule, except 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 the disqualification, provided that the judge shall disclose on the record the basis of such disqualification. If, following the disclosure, the parties and lawyers agree, either in writing or on the record before another judge, that the judge should not be disqualified, the judge may participate in the proceeding."

The Committee reviewed Florida Judicial Ethics Advisory Opinion 2003-18. The question raised in this inquiry was whether disclosure and disqualification was required when a law firm appears before the judge that has employed the judge's brother as an expert witness in a different matter not pending before the judge. The Florida committee determined that that the judge would not be obliged to disclose or disqualify when the firm appeared in his/her court, but was required to apply the below guiding principles on disclosure:

The judge should disclose matters which he or she believes might reasonably impair his or her impartiality. However, after searching his o[r] her conscience and determining that the matter will not have an effect, disclosure is not required.

Based upon the facts of this inquiry, the Committee unanimously determined that the Judicial Official does not have a continuing duty to disclose his/her relative's prior employment relationship once the relative stops working for the firm, unless the relative, while he/sh e was at the firm, worked on the case now pending before the Judicial Official or still expects to receive a financial benefit of any kind from the firm. If the

relative worked on the case or expects to receive a financial benefit, the Committee agreed that the three conditions imposed in [JE 2013-48](#) would still apply. The Committee noted that, pursuant to Rule 2.11(a)(1), the Judicial Official should consider whether he/she harbors any bias (favorable or unfavorable) against the firm. If any bias exists, the Judicial Official must disqualify him/herself from hearing any cases involving the firm.

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