



## Connecticut Committee on Judicial Ethics

### Informal Opinion Summaries

**2016-09 (June 16, 2016)**

**Use of Office; Promoting Public Confidence; Fundraising  
Rules 1.2, 1.3, 2.11, 3.1 & 3.7**

**Issue & Facts:** In 2001, the Connecticut Bar Foundation (hereinafter, CBF), as part of its Oral History Project on Connecticut's women lawyers (hereinafter, Project) adopted an initiative to create photographic portraits of all state and federal women judges, magistrates and state referees in Connecticut. During the initial phase of the Project, seventy-six portraits were completed. Those portraits were the subject of an exhibit at the Legislative Office Building in 2007 and currently are on display at the University of Connecticut School of Law. The Project seeks to take photographs of the additional women who have been appointed judges, magistrates and state referees in Connecticut since that time. As in the past, the photographs will be owned by the CBF and will not be used for commercial purposes. Permission will be sought to use the photographs for the Project, as it may change over time, including, but not limited to, using the photographs to solicit grant funding for the Project, and inclusion of the photographs in publications, documentaries and exhibits of the Project. The photographer, who is an attorney, will not be compensated but will be reimbursed for expenses. The Judicial Officials will not be compensated, but will receive a copy of their photograph that is included in the Project.

1. May Judicial Officials consent to participate by allowing their photographs to be included in the Project?
2. If the answer to question 1 is yes, may a Judicial Official who is a co-chair of the Project send a letter concerning the Project to Judicial Officials to solicit their participation in the Project?

**Relevant Code Provisions:** Rule 1.2 of the 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 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." Comment (4) to that Rule states that "Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates the Code or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation."

Rule 2.11, concerning disqualification, states, in part, as follows:

(a) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned including, but not limited to, the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding....

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 organizations 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”.

**Response:** This Committee has previously been asked about the use of a judicial official’s photo and biographical information in advertising in various contexts. For example, in [JE 2008-14](#), the Committee determined that a Judicial Official could participate in a law-related educational program subject to various conditions, including that “the Judicial Official should retain the right to review and pre-approve the use of any biographical information or photograph to ensure that the information is presented in a tasteful and dignified manner. It was noted that control over the use of such information by the Judicial Official is needed to ensure that Canon 2 (b)’s prohibition against lending the prestige of judicial office to advance the private interests of others is not violated.” Similarly, in [JE 2014-10](#), the inquiring Judicial Official was told that he or she could permit the use of the Judicial Official’s name with respect to an annual writing competition sponsored by an ethnic bar association subject to various conditions. One such condition was that the “Judicial Official should retain the right to review and pre-approve the use of any information or other material used to solicit contributions to fund the competition.”

Only a few older decisions from other jurisdictions were located. In Kansas Judicial Ethics Opinion JE-48, the Committee advised the inquiring judge that he or she could not pose in judicial attire in his or her courtroom for a professional photographer who intended to use the photographs in demonstrating his work, which would be circulated to various advertising agencies. The Committee noted that the proposed conduct violated Canon 2B of their Code, which provided, in pertinent part, “A judge ... should not lend the prestige of his office to advance the private interests of others...” In New York Opinion 95-141, the New York Advisory Committee on Judicial Ethics advised that a judge could allow her photograph to be used as part of a photographic exhibit of prominent local women, which exhibit was to be displayed in local public libraries. The intent of the exhibit was to provide encouragement for young women to excel in school and advance into college. The inquiring judge was concerned that some commercial use of the exhibit might be made by the photographer, who also owned a local firm which operated under a different name. Based upon the facts presented, including

that the photographer assured the judge that the only reference in the exhibit would be to the photographer's name, the New York Committee determined that the Judicial Official would not be lending the prestige of office to advance the interests of the photographer, and therefore could allow her photograph to be displayed as part of the exhibit.

Based upon the facts provided, including that the photographs will not be used for any commercial purposes, the Committee unanimously determined that (1) Judicial Officials may consent to being photographed provided that (a) they retain the right to review and pre-approve the use of any biographical information or photograph to ensure that the information is presented in a tasteful and dignified manner and that consistent with Rule 3.7(a)(4), if the photograph is to be used for a fund-raising purpose, the purpose is one that concerns the law, the legal system or the administration of justice, and (b) should the photographer appear before a photographed Judicial Official within a reasonable period of time, but not less than two years, the Judicial Official discloses the facts related to the photograph and her receipt of a copy, and (2) the inquiring Judicial Official may send a letter concerning the Project to Judicial Officials to solicit their participation in the Project.

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