



## **Connecticut Committee on Judicial Ethics**

### **Informal Opinion Summaries**

**2016-11 (July 21, 2016)**

**Recommendations; Rules 1.2, 1.3 & 2.11; Conn. Gen. Stat. § 51-39a**

**Issue:** May a Judicial Official reach out to a current courthouse employee and suggest that he or she send a résumé to the Judicial Official's friend, a partner in a large out-of-state law firm, who is hiring staff for the firm's Connecticut office?

**Background:** Prior to the recent Judicial Branch layoffs, several courthouse staff members spoke with various Judicial Officials and inquired whether the Judicial Officials would serve as references for the staff. One such Judicial Official has known an attorney for many years and socialized with the attorney both before and subsequent to the Judicial Official's appointment as a judge. During a recent social engagement, the attorney, who is a partner in a large out-of-state law firm, lamented about the competence of the staff in the firm's Connecticut office and said he wished they had someone who was knowledgeable about pleadings. The Judicial Official stated that is what the staff in the courthouse do and, after briefly thinking about the courthouse employees who had spoken with the Judicial Official about references, stated that he or she knew one person who had that skill set. The attorney then asked the Judicial Official if he or she could get that individual to send the attorney a résumé. The Judicial Official has inquired whether he or she may reach out to the current employee that the Judicial Official had in mind (an assistant clerk who has served as a courtroom clerk in the Judicial Official's courtroom) and suggest that he or she send a résumé to the Judicial Official's friend.

**Relevant Code Provisions:** Rule 1.2 of the 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 1.3 of the Code 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." The Commentary to Rule 1.3 states, in relevant part, as follows:

(2) A Judge may provide a reference or recommendation for an individual based on the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if the use of the letterhead would not reasonably be perceived as an attempt to exert pressure by reason of judicial office.

Rule 2.11 states, in relevant part, that a judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned.

**Response:** The propriety of furnishing letters of recommendations or serving as a reference for employment purposes has been addressed by this Committee in a number of its prior opinions. In general, this Committee has concluded that a Judicial Official may provide references or recommendation subject to the conditions articulated in [JE 2013-32](#):

- (1) The recommendation should be based on personal knowledge of the applicant's qualifications (see Rule 1.3 comment 2);
- (2) The applicant is not a relative within the meaning of the Code or General Statutes § 51-39a;
- (3) If the recommendation is furnished in writing on official letterhead, the Judicial Official should indicate that the recommendation constitutes the Judicial Official's personal opinion (see Rule 1.3 comment 2);
- (4) Persons/entities receiving the recommendation do not have cases pending before the Judicial Official at the time the recommendation is provided or for a reasonable period of time after the submission of the letter of recommendation; however, in JE 2012-27, the Judicial Official

was permitted to provide a letter of recommendation for an applicant for a supervisory position in the Office of Public Defender Services even though the Public Defenders appeared before the Judicial Official, although the applicant did not appear and was not likely to appear if he or she received the new position;

- (5) If the Judicial Official believes that recusal would be required in order to comply with condition (4) because his or her fairness would be impaired, and that recusal is likely to be frequent, the Judicial Official should not provide the letter of recommendation;
- (6) The letter should be specific to the position being sought (see [JE 2008-26](#));
- (7) The Judicial Official may not provide a recommendation in adversarial proceedings (see [JE 2008-15](#)); and
- (8) The Judicial Official may not provide a recommendation in connection with government employment that might suggest inappropriate political activity, but may be listed as a reference (see [JE 2009-13](#) & [JE 2011-19](#)).

The propriety of furnishing a referral was addressed in [JE 2008-17](#), wherein this Committee stated that “a Judicial Official may recommend an attorney to an individual provided that the individual given the recommendation has a sufficiently close relationship to the Judicial Official that the Judicial Official would automatically recuse himself or herself from a case involving that person independent of whether the Judicial Official provides a recommendation. If a Judicial Official provides a recommendation, he/she should recommend multiple names of counsel.” This opinion was cited and followed in later opinions: [JE 2012-02](#); [JE 2013-17](#) (condition 3) and [JE 2013-18](#) (condition 3).

Based upon the information provided, the Committee unanimously determined that the Judicial Official may reach out to the court employee and suggest that the employee send a résumé to the Judicial Official’s friend, subject to the following:

- (1) All referrals/recommendations given on behalf of an individual shall be based

upon personal knowledge of the individual's qualifications. (See Rule 1.3 comment 2);

- (2) No individual referred/recommended shall be a relative within the meaning of the Code or General Statutes § 51-39a; and
- (3) If the individual referred (i.e., the court employee) does not have a sufficiently close relationship to the Judicial Official that would automatically require recusal from a case involving that person independent of the referral and that person appears before the Judicial Official, the Judicial Official should disclose the referral relationship for a reasonable period of time, which is not less than two years from the date of the referral.

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