



## Connecticut Committee on Judicial Ethics

### Informal Opinion Summaries

**2016-15 (Emergency Staff Opinion Issued October 28, 2016)**

**Event, attendance/appearance: Use of Office; Promoting Public Confidence; Fundraising; Rules 1.2, 1.3, 2.10, 3.1 & 3.7**

**Issue & Facts:** As part of a municipality's celebration of a milestone number of years since its founding, its historical society would like to hold a fund-raising dinner at which Judicial Officials who are connected to the municipality will be honored and will speak about the evolution of the law, the courthouses in the municipality, the municipality as a seat of judicial power, and the role of the judicial process. The entire event will be dedicated to a discussion of the law, the courthouse history, etc. The municipality, but not the historical society, has been a party to numerous lawsuits. The historical society, which is a 501(c)(3) nonprofit organization, will be the beneficiary of the fund-raiser. The Judicial Official will not be involved with the sale of tickets. A Judicial Official inquired whether he or she may participate.

**Relevant Code Provisions:** 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 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 2.10 states that a judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court or make any non-public statement that might substantially interfere with a fair trial. It further provides that a judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

Rule 2.11 states that 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, when the judge has a personal bias or prejudice concerning a party.

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 (1) will interfere with the proper performance of judicial duties, (2) lead to frequent disqualification, (3) appear to a reasonable person to undermine the judge’s independence, integrity or impartiality, (4) appear to a reasonable person to be coercive, or (5) make use of court premises, staff or resources except for incidental use or for activities that concern the law, the legal system or the administration of justice, or the use is permitted by law.

Rule 3.7 (a) states that subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations concerned with the law, the legal system or the administration of justice, as well as those sponsored by or on behalf of educational, religious, charitable, fraternal or civic organizations not conducted for profit, including, but not limited to, the following activities: “(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, 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”. Comment (1) to this Rule notes that the activities permitted by subsection (a) “generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions and other not-for-profit organizations, including law related, charitable, and other organizations.” Comment (2) to this Rule notes that “Even for law related

organizations, a judge should consider whether ... the nature of the judge's participation in or association with the organization would conflict with the judge's obligation to refrain from activities that reflect adversely on a judge's independence, integrity, and impartiality."

**Response:** The issue of appearing at or receiving an award at a fund-raising event was previously considered by this Committee on multiple occasions. Some of those opinions are discussed below.

In [JE 2010-30](#), this Committee considered whether a Judicial Official could be (1) honored at a fund-raising event hosted by a law-related organization that provides legal services, and (2) featured in advance publicity. The Committee concluded that the Judicial Official may be honored at the event because it was one that "concerns the law, the legal system, or the administration of justice" under Rule 3.7 (a) (4). With respect to publicity, this Committee advised that special care must be taken to ensure that the Judicial Official's name is not being used to encourage law firm participation and that no appearance is created that any of the donors or the organization is in a special position to influence the Judicial Official.

In [JE 2012-15](#), this Committee determined that a Judicial Official who had served as a member of a task force created to study issues concerning the administration of criminal justice could attend and be acknowledged at a fund-raising event hosted by a nonprofit law-related organization.

In [JE 2012-22](#), at issue was whether a Judicial Official, prior to his or her resignation from the bench, could authorize, assist and agree to be the guest of honor at a fund-raising event that would benefit an organization that concerns the law, the legal system or the administration of justice. Based upon the facts presented, including that the "retirement" event involved fund-raising for a non-profit organization concerned with the law, the legal system or the administration of justice, that the Judicial Official would not know in advance of the event who had purchased tickets, the event would take place after the Judicial Official's retirement, and that the Judicial Official would not preside over any contested matters once the tickets were offered for sale, the Committee

unanimously determined that the Judicial Official could agree to be the guest of honor at the “retirement” fund-raising event. The Committee further determined that the proposed event would not create an appearance of impropriety in violation of Rule 1.2 and also would not constitute an attempt to use the prestige of office to advance the interests of others in violation of Rule 1.3.

While the foregoing opinions concern appearing and being a guest of honor at a law-related organization’s fund-raising event, it is important to note that the new Code of Judicial Conduct, which was adopted effective January 1, 2011, provides in Rule 3.7 that subject to the requirements of Rule 3.1, a judge may participate in activities (1) sponsored by organizations or governmental entities concerned with the law, the legal system or the administration of justice, and (2) those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations which are not conducted for profit. Rule 3.7(a) states that the Judicial Officials can participate in such activities “including, but not limited to, the following activities” and then lists 6 types of activities. Subdivision (4), as noted above, concerns appearing or speaking at, receiving an award, being featured on the program of and permitting his or her title to be used in connection with the event “of such an organization or entity, but if the event serves a fund-raising purpose, the judge may only participate only if the event concerns the law, the legal system, or the administration of justice”.

Applying the fund-raising purpose of an event to non-law related entities is consistent with the foregoing plain language of the Code as well as the opinion expressed by Cynthia Gray in her article “Nexuses and tangents: The law, the legal system, or the administration of justice”, which appeared in Judicial Conduct Reporter, Vol. 37, No. 1, Spring 2015 (see Appendix A). (This is a change from the opinion Ms. Gray initially took when the model code was first adopted.) In particular, at page 11, she stated the following:

In a new exception created in the 2007 model code, Rule 3.7(A) (4) provides that a judge may appear, speak, or receive an award at, be featured on the program of, and permit his or her title to be used in

connection with a fund-raising event for a non-profit organization “only if the event concerns the law, the legal system, or the administration of justice.” The Florida version of the rule provides that “the law, the legal system, or the administration of justice” applies to both the organization sponsoring the fund-raising event and the purpose for which the funds are being raised.

In this case, the sponsoring organization is a civic/educational organization not conducted for profit and therefore qualifies as an organization within the meaning of Rule 3.7. Therefore, under our Code of Judicial Conduct, the question presented is whether the “event” is one that “concerns the law, the legal system, or the administration of justice”. Unlike Florida, Connecticut does not require that the purpose for which the funds are being raised also relate to “the law, the legal system, or the administration of justice”.

In [JE 2011-02](#), this Committee, by a vote of 3 – 1, determined that in order for a governmental committee, board, commission or other governmental position to be deemed concerned with the law, the legal system, or the administration of justice for purposes of Rule 3.4, “there must be a direct nexus between what a governmental commission does and how the court system meets its statutory and constitutional responsibilities – in other words, how the courts go about their business.” In a footnote, the Committee specifically noted that it was not deciding if the same interpretation of the phrase “the law, the legal system, or the administration of justice” would apply in interpreting Rule 3.2, which concerns appearances before governmental bodies and consultation with government offices. Similarly, the Committee has not formally adopted the definition used in Rule 3.4 for Rule 3.7, although it is construing the same phrase.

In [JE 2012-22](#), this Committee authorized a Judicial Official, while still holding office, to agree to be the guest of honor at an event recognizing the Judicial Official’s service as a judge, which event would take place following his or her return to the private practice of law. An event that is concerned with the evolution of the law, the history of courthouses

in a locality, the role of the municipality as a seat of judicial power, and the role of the judicial process “concerns the law, the legal system, or the administration of justice” in a similar manner.

Based upon the foregoing, it was determined that the Judicial Official is permitted to participate as a guest of honor and speaker at the fund-raiser subject to the following conditions:

1. The Judicial Official does not discuss any pending or impending cases in any court and does not make any public statement that might reasonably be expected to affect the outcome or to impair the fairness of a matter pending or impending in any court or make any non-public statement that might substantially interfere with a fair trial or hearing (see Rule 2.10);
2. The Judicial Official does not personally believe that attendance and participation as a guest of honor will create an appearance of impropriety (see Rule 1.2) or appear to a reasonable person to be coercive (see Rule 3.1);
3. The Judicial Official should retain authority to review any press release or invitation to make sure that there is no attempt to use the prestige of judicial official to advance the interests of the organization in violation of Rule 1.3, however, in accordance with Rule 3.7(a)(4), the Judicial Official may be featured on the program and allow his or her name and title to be used in connection with the event; and
4. If the organization appears before the Judicial Official as a party within a reasonable period of time following the event, the Judicial Official should disclose the fact that he/she attended the fund-raising event and was a guest of honor (see Rule 2.11).

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