



## Connecticut Committee on Judicial Ethics

### Informal Opinion Summaries

**2016-16 (Issued December 15, 2016)**

**Extrajudicial Activities; Political Organizations; Rules 1.2, 3.1, 3.7 & 4.1**

**Issue:** May a Judicial Official support the American Civil Liberties Union, the Southern Poverty Law Center, the National Organization for Women, and a national ethnic bar association by: (1) donating money, (2) joining as a member, and/or (3) serving as an officer or board member?

**Response:** Rule 1.2 of the Code of Judicial Conduct provides 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 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 3.1 of the Code concerns extrajudicial activities and sets forth general limitations on such activities, such as not using court premises, staff or resources, except for incidental use or for activities that concern the law, the legal system, or the administration of justice unless otherwise permitted by law, and not participating in activities that (1) 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, or (4) appear to a reasonable person to be coercive.

Rule 3.7(a) provides that a judge "may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational,

religious, charitable, fraternal or civic organizations not conducted for profit... including,...(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity: (A) will be engaged in proceedings that would ordinarily come before the judge; or (B) will frequently be engaged in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member." The rule's commentary states that "[e]ven for law related organizations, a judge should consider whether the membership and purposes of the organization, or 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." Rule 3.7, cmt. (2).

Rule 4.1 of the Code of Judicial Conduct, entitled Political Activities of Judges in General, states in relevant part, as follows:

(a) Except as permitted by law, or by Rules 4.2 and 4.3, a judge shall not:

(1) act as a leader in, or hold an office in, a political organization;

(2) make speeches on behalf of a political organization;

(3) publicly endorse or oppose a candidate for any public office;

(4) solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate for public office...

(8) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or

(9) 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...

(c) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

Because each organization raises somewhat different concerns under the Code of Judicial Conduct, the Committee addresses them separately below.

## **American Civil Liberties Union**

The American Civil Liberties Union's ("ACLU") website states that "[f]or nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country." <https://www.aclu.org>. The ACLU's priorities include LGBT equality, preserving abortion rights, freedom of speech and police misconduct, among others, and the website contains some material that is critical of prominent political figures. It does not appear as though the ACLU is a party to any pending civil cases in the Connecticut Superior Court, although the Connecticut chapter of the ACLU has appeared as counsel or amicus in approximately 8 cases before the Connecticut Supreme Court within the past five years, one of which remains pending.

The ACLU seems to have attributes of both an organization "concerned with the law, the legal system, or the administration of justice" under Rule 3.7 and a "political organization" under Rule 4.1. This is consistent with the ACLU's designation as a 501(c)(4) "social welfare organization" under the Internal Revenue Code. Such organizations may engage in lobbying and "some" political activity; see <https://www.irs.gov/charities-non-profits/other-non-profits/social-welfare-organizations>; so long as political activity is not the primary purpose of the organization. Many of the issues championed by the ACLU through lobbying and litigation are controversial and of a high public profile.

In [JE 2009-17](#), this Committee concluded that a judge could join the judge's section of the American Board of Trial Advocates, an organization that had "adopted over 40 resolutions on a variety of topics, as well as taking a position with respect to certain legislation and filing briefs as amicus curiae in various cases," subject to certain conditions. Similarly, in [JE 2013-16](#), this Committee determined that a Judicial Official could become a member of the Connecticut Bar Association, which "comments and takes public positions on legislation, engages in issue advocacy, including issues that directly impact the judiciary, sometimes files amicus curiae briefs and further that people in leadership positions customarily solicit opinions from and/or attempt to

persuade CBA members concerning various matters," but advised that the Judicial Official should not serve as an officer, director or section leader. Also relevant is [JE 2013-35](#), in which this Committee considered whether a Judicial Official could attend, be acknowledged or honored, and speak at a fund-raising event co-hosted by a national nonprofit 501(c)(3) law-related organization whose mission is to achieve full recognition of the civil rights of a particular class of citizens through impact litigation, education and public policy work. The Committee also considered whether the Judicial Official could make a donation to the organization. The Committee determined that the Judicial Official should decline to be honored or acknowledged and should not speak at the event. However, the Committee determined that the Judicial Official could attend the event and make a donation to the organization, subject to several conditions.

Although this Committee apparently has not considered a Judicial Official's involvement in a 501(c)(4) organization, the New York Advisory Committee on Judicial Ethics has reached similar conclusions and recommended similar restrictions regarding a judge's activity in such organizations, including the New York Civil Liberties Union, provided that such organizations are not "political organizations" for purposes of the Code of Judicial Conduct. See New York Opinion 98-101 (judge may be a member of NYCLU and Planned Parenthood, but "should take care that such membership does not involve the judge in being associated with matters that are the subject of litigation or public controversy," and should not participate in NYCLU's annual awards event); New York Opinion 03-45; (judge can make contributions to NYCLU); New York Opinion 15-210 (judge may be a member of a 501(c)(4) organization dedicated to educating the public regarding firearms and the second amendment, but should not assume a leadership position in the organization). See also Florida Opinion 2009-13 (judge may become a member of the National Rifle Association for the purpose of joining a local gun club, but must not become personally involved in NRA's lobbying or fundraising efforts, and must continually monitor membership to ensure compliance with ethical canons).

Based upon the information and authorities set forth above, the committee unanimously determined that the Judicial Official may join the ACLU as a member, and make monetary contributions to the ACLU, subject to the following conditions:

- 1.) The Judicial Official should not serve as an officer, on a board of directors, or in any other leadership position in the ACLU;
- 2.) The Judicial Official should not associate him or herself with organizational positions on matters of public controversy;
- 3.) The Judicial Official should disqualify himself or herself from any litigation where the ACLU (including the Connecticut chapter) is a party or is representing a party;
- 4.) If an issue comes before the Judicial Official for decision that involves a matter on which ACLU has taken a public position (such as by litigation or lobbying) the Judicial Official should disclose his or her affiliation with the ACLU and should consider whether recusal is necessary;
- 5.) The Judicial Official should not use his or her judicial title in connection with ACLU membership or donations, and should request and obtain adequate assurances that his or her judicial title will not be publicized or used by the organization for any purpose;
- 6.) The Judicial Official should regularly reexamine the activities and rules of the organization to determine whether it is proper for the Judicial Official to continue his or her relationship with it and should carefully consider whether specific programs or activities of the organization may undermine confidence in the Judicial Official's independence, integrity and impartiality.

### **Southern Poverty Law Center**

According to its website, the Southern Poverty Law Center ("SPLC") is a 501(c)(3) organization "dedicated to fighting hate and bigotry and to seeking justice for the most vulnerable members of our society. Using litigation, education, and other forms of advocacy, the SPLC works toward the day when the ideals of equal justice and equal

opportunity will be a reality." <https://www.splcenter.org>. Key issues for the organization include hate crimes, immigrant's rights, economic justice, children's rights and LGBT rights.

The Committee's analysis regarding the ACLU is equally applicable to the SPLC, with the observation that the SPLC apparently has far less of a local presence than the ACLU. Therefore, Committee unanimously determined that that the Judicial Official may become a member of and donate to the SPLC, subject to the conditions outlined above for such activity in connection with the ACLU. In addition to the authorities cited above in the Committee's discussion of the ACLU, the Committee also considered [JE 2012-30](#) (Judicial Official may make donation to 501(c)(3) organization subject to several conditions) and New York Opinion 14-117 (judge may donate to the Southern Poverty Law Center) in rendering its opinion.

### **National Organization for Women**

The National Organization for Women ("NOW") is a 501(c)(4) organization that describes itself as "the grassroots arm of the women's movement, the National Organization for Women is dedicated to its multi-issue and multi-strategy approach to women's rights, and is the largest organization of feminist grassroots activists in the United States," see <http://now.org/>. Key issues for NOW include protecting abortion and reproductive rights, LGBT equality and fighting violence against women. The Frequently Asked Questions section of NOW's website states that it is not affiliated with any political party and that all candidates for office are eligible for NOW's endorsement. However, NOW's website and its affiliated political action committee; see <http://nowpac.org/>; appear to be one-sided in their support of one of the major political parties and its candidates, and NOW's president has been outspoken about the results of the 2016 presidential election.

The foregoing raises the question of whether a Judicial Official's involvement with NOW through membership and donations would constitute improper political activity under Rule 4.1. See [JE 2010-24](#) (Code of Judicial conduct prohibits a Judicial Official "from making contributions to federal and non-Connecticut, as well as Connecticut,

political organizations and candidates"); [JE 2012-32](#) (Judicial Official should not submit for publication an op-ed that that would, among other things, suggest the Judicial Official's political views and priorities in violation of Rule 3.1 and Canon 4).

The New York Advisory Committee has opined that certain nonprofit organizations may be considered "political organizations" for purposes of the Code of Judicial Conduct. See New York Opinion 14-95 (judge may not donate to or become a member of 501(c)(4) organization "that seeks to promote individuals with a particular viewpoint on abortion for election and appointment to public office at every level of government"); New York Opinion 14-117 (judge should not contribute to MoveOn.org even though it encompasses a nonprofit education arm).

Given the clear political bent of NOW and its political action committee, it appears that the Judicial Official's proposed involvement with NOW would constitute improper political activity under Rule 4.1(a)(4) and (c). In addition, such activity could call into question the Judicial Official's independence, integrity and impartiality under Rules 3.1 and 3.7. Therefore, the Committee unanimously determined that the Judicial Official should not become associated with NOW through donations or membership.

### **National Ethnic Bar Association**

The national bar association in question supports, guides and mentors local chapters; serves as a resource tool for its local chapters; provides networking and referral opportunities for its members; and encourages the formation of new local chapters, among other things. There does not appear to be any requirement that members of the national bar association be of a particular ethnicity, sex, age, group, or subscribe to a particular religious belief. In [JE 2012-10](#), this Committee approved of a Judicial Official's proposed membership in a local ethnic bar association in a very similar factual setting, but suggested that the Judicial Official "should regularly reexamine the activities and rules of the association to determine whether it is proper for the Judicial Official to continue his or her relationship with it and should carefully consider whether the Judicial Official's identification with or involvement in specific programs or activities of the association may undermine confidence in the Judicial Official's independence,

integrity and impartiality." On the basis of JE 2012-10, the Committee unanimously that the Judicial Official may donate to and join the national bar association as a member, subject to the above-quoted conditions as set forth in that opinion. The Committee further concluded that the Judicial Official may serve as an officer or on the board of directors of the national bar association, also subject to the conditions outlined in JE 2012-10.

In reaching the latter conclusion, the Committee also considered [JE 2013-16](#) (Judicial Official should not serve as an officer, director or section leader for the Connecticut Bar Association, citing Rules 1.2, 1.3, 3.1 and 3). The Committee distinguished that opinion on the basis that the national bar association's presence and activities in Connecticut with respect to the Connecticut bar, litigation and legislation are considerably less pervasive in comparison to the Connecticut Bar Association.

[Connecticut Committee on Judicial Ethics](#)