



Connecticut Committee on Judicial Ethics

Informal Opinion Summaries

2017-04 (Emergency Staff Opinion Issued June 6, 2017)

Promoting Public Confidence; Political Activity; Rules 3.2 & 4.1

Issue: May a Judicial Official meet with a U.S. Senator from another state at a private residence to discuss issues of mutual interest that are related to the law, the legal system or the administration of justice?

Relevant Code Provisions: Rule 3.2 states that a judge “shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or legislative body or official, except:

- (1) in connection with matters concerning the law, the legal system, or the administration of justice;
- (2) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge’s judicial duties; or
- (3) when the judge is acting in a manner involving the judge’s legal or economic interests or when the judge is acting in a fiduciary capacity.

Comment (2) to Rule 3.2 states “[i]n appearing before governmental bodies or consulting with governmental officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others’ interests; Rule 2.10, governing public comment on pending and impending matters; and Rule 3.1 (3), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.”

Rule 4.1(c) states that “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.”

Response: This inquiry was circulated to the Committee members and their input was solicited and received. Contact between judges and a legislative/executive body or official may be made only in the narrowest of circumstances. Rule 3.2 of the Code of Judicial

Conduct sets forth the three limited circumstances: a judge may consult with government officials (1) in connection with matters concerning the law, the legal system or the administration of justice; (2) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or (3) when the judge is acting in a manner involving the judge's legal or economic interests or when the judge is acting in a fiduciary capacity.

In 2015, this committee considered whether a judge may appear at a public hearing before an executive body in a matter involving the judge's legal or economic interest. The issue raised in [JE 2015-05](#) concerned whether a JO may speak at a town hall meeting to discuss the future of an old, closed school in the town's center. The members unanimously concluded that the JO may attend and speak at the town meeting to discuss the future uses of the school, subject to two conditions: (1) the JO must state that he/she is speaking solely in his or her capacity as a resident/private citizen and travel sports coach and (2) the JO shall otherwise exercise caution to avoid using the prestige of judicial office in any way.

In [Massachusetts CJE Opinion 2003-6](#), the Massachusetts committee considered the propriety of communicating with the Executive and Legislative branches regarding proposed closures of several courthouses. The committee found the proposed activity to be permissible under the Code because it was a matter that concerned "the law, the legal system, and the administration of justice", but cautioned the judge to remember his judicial role and to formulate and express his views with his primary role in the system in mind. The judge was also advised to avoid partisan politics.

In April 2017, the Colorado Judicial Ethics Advisory Board determined that contact between a judge and his/her federal congressional representatives to express approval or dissatisfaction with federal legislation or cabinet appointments violated the Code of Judicial Conduct. In [CJEAB Opinion 2017-01](#), the Colorado advisory board determined that the proposed communication fell outside the narrow scope of Rule 3.2 because it implicated the judge's personal opinion and would very likely amount to an impropriety or give the appearance of impropriety, undermine the judge's independence, integrity, or impartiality and implicate the Code's proscription against political activity. The board also noted that even when such contact falls within the narrow scope of Rule 3.2, judges still remain subject to the Code's other provisions, including impropriety, judicial independence, integrity and impartiality.

At issue in [Florida JEAC Opinion 2010-20](#) was whether a judicial candidate may attend a town hall meeting, hosted by an elected state representative, put on for the limited purpose of discussing the outcome of the legislative session. The committee concluded that attending a

town hall meeting that is open to the public for the specific purpose of discussing the outcome of the legislative session was permissible under the Code. The committee cautioned, however, that any meeting conducted by a single elected official, who may be running for election, can easily become a political event based on what occurs at the meeting. The true nature and purpose of the meeting will not necessarily be known until the meeting occurs and may change at any point.

In conclusion, the Committee agreed that the Judicial Official may meet with a U.S. Senator from another state at a private residence to discuss issues of mutual interest that are related to the law, the legal system or the administration of justice, subject to the following:

- 1) The Judicial Official must be mindful that he/she remains subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests; Rule 2.10, governing public comment on pending and impending matters; and Rule 3.1 (3), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. (Rule 3.2, cmt. (2)).
- 2) The focus of the discussion should be centered on ways to improve the law, the legal system or the administration of justice. The Judicial Official shall not act as a political consultant.
- 3) The meeting should remain private and cannot be used by the Senator for political purposes.
- 4) Any meeting conducted by a single elected official, who may be running for election, can easily become a political event based on what occurs at the meeting. Caution is emphasized because the nature, purpose and spirit of the meeting may change at any point.