



## Connecticut Committee on Judicial Ethics

### Informal Opinion Summaries

**2017-07 (July 20, 2017)**

**Extrajudicial Activities; Impartiality; Appearance of Impropriety**

**Rules 1.2, 3.1 & 3.7**

**Issue:** May a Judicial Official belong to the Connecticut Criminal Defense Lawyers' Association (CCDLA)?

**Additional Facts:** The home page of the CCDLA website states the following, among other things, under the heading "What is the CCDLA?":

The Connecticut Criminal Defense Lawyers Association was founded in 1988 to be the voice of the criminal defense bar and to advocate for the preservation of the constitutional rights of the accused.

The CCDLA has members in both private practice of criminal defense as well as state and federal public defenders. No prosecutors are permitted to be members of the organization.

CCDLA's online application form reflects its prohibition on prosecutors. See <http://www.ccdla.org/join-ccdla/>. In addition, CCDLA engages in legislative advocacy by "submitting testimony annually on bills important to the criminal defense community and offering input on the confirmation process for judges."

**Relevant Code Provisions:** 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).

**Response:** In [JE 2013-25](#), this Committee considered whether a Judicial Official could accept an invitation from the Connecticut Trial Lawyers Association (“CTLA”) to attend a dinner at its annual meeting as a guest of the CTLA. Based on the facts presented, including that membership in the CTLA was open to all and that the CTLA’s stated purpose was to create and maintain a more just society by preserving individual rights within the justice system, the Committee determined that the Judicial Official could accept the invitation subject to certain conditions.

In [JE 2010-06](#), this Committee determined that a Judicial Official should decline to accept an honorary lifetime membership in a law enforcement alumni association "in view of the high likelihood of members of the association appearing before the Judicial Official and, in general, the impression of partiality to law enforcement that may be unintentionally created."

In [JE 2009-17](#), this Committee considered whether a Judicial Official could join the American Board of Trial Advocates (ABOTA) as a member in the "judge" category. ABOTA was an organization "whose stated purposes include, inter alia, elevating the standards of integrity, honor and courtesy in the legal profession, aiding in the education and training of trial lawyers, preserving the jury system, and promoting the efficient administration of justice and constant improvement of the law." Membership was limited to attorneys and judges who met certain experience requirements, and required approval of a local and/or national board. Based upon the facts presented, the Committee determined that membership was permissible subject to certain conditions.

The Committee observed that although the CCDLA appears to be an entity concerned with the "law, the legal system, or the administration of justice" under Rule 3.7, the CCDLA's stated purpose is to advocate for the defense bar and the accused; it prohibits prosecutors from joining as members; and it engages in legislative advocacy to further its agenda, including making recommendations to the General Assembly on judicial appointments. The Committee concluded that membership in a one-sided organization dedicated to advancing the interests of a particular category of parties and attorneys could reflect negatively on the Judicial Official's impartiality and independence and create the appearance of impropriety in violation of Rule 1.2 and comment 2 to Rule 3.7. Therefore, the Committee unanimously determined that the

Judicial Official should not belong to the CCDLA as a member. In addition to the authorities cited above, the Committee also considered Florida Opinion 95-21 (judge's membership in Academy of Florida Trial Lawyers, which limited membership to attorneys who dedicated less than 40% of their practice to civil defense matters, would "cast reasonable doubt on the judge's capacity to act impartially as a judge"); Illinois Opinion 2001-08 (judge should not accept complimentary membership in specialized bar association whose member attorneys generally represent a single side in legal disputes); and New York Opinion 12-44 (judge should not participate in training program available only to prosecutors because "it would be difficult, if not impossible, for a judge who is presiding over and critiquing a mock trial as part of a trial advocacy program for a 'one-sided' audience to avoid the appearance that he/she is teaching or giving partisan advice on litigation strategy or tactics to that 'side'").

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