



## Committee on Judicial Ethics

State of Connecticut Judicial Branch  
Superior Court Operations  
100 Washington Street, 3<sup>rd</sup> Floor  
Hartford, CT 06106

### MEMBERS:

Hon. Maureen D. Dennis, Chair  
Hon. Christine E. Keller  
Hon. Robert B. Shapiro  
Hon. Angela C. Robinson  
Professor Sarah F. Russell  
Hon. James T. Graham, Alternate

October 19, 2017

Hon. Joseph M. Shortall  
New Britain Superior Courthouse  
20 Franklin Square  
New Britain, CT 06051

RE: Formal Opinion JE 2017-12

Dear Judge Shortall:

You have inquired whether, based upon the facts below, you have an obligation to report to the state's attorney the unreported allegations of what appears to you to be sexual assaults disclosed during a hearing on an application for a restraining order and, if there is no such obligation to do so, whether the Committee has an opinion as to whether you should do so. You further inquired whether the answer to the foregoing is dependent upon your assessment of the credibility of the witnesses during the hearing. You have advised us that during a contested hearing regarding a civil protection order (an ex parte order was not issued), the petitioner testified that on nine separate occasions during the period March – May, 2017 she awoke in the morning experiencing abdominal or vaginal pain, bruised inner thighs, and what appeared to be semen on her body. She was told by her mother-in-law, who lived with her, that she had witnessed the respondent have sexual intercourse with her while she slept.

None of the foregoing incidents were reported to the police. Petitioner and her mother-in-law testified that they fear and distrust the police and that the respondent is a police officer in the town where the events are alleged to have occurred. The petitioner testified to other conduct that she characterized as stalking, many but not all of which were sworn to in her affidavit, however, the sexual assaults were not mentioned in the affidavit.

The foregoing testimony was provided in open court. The hearing ended following your canvass of the petitioner after she consulted with her attorney and then asked to withdraw the petition.

Rule 1.2 of the Code of Judicial Conduct 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 2.15 of the Code of Judicial Conduct, entitled “Responding to Judicial and Lawyer Misconduct”, sets forth the obligations of a judge who has knowledge or who receives information indicating a substantial likelihood that another judge or a lawyer has violated his or her respective code of conduct. Rule 2.15 does not address conduct by anyone other than a judge or attorney.

In [JE 2015-01](#), at issue was whether a Judicial Official had an obligation to report when the Judicial Official received information that an attorney may have committed a violation of the Rules of Professional Conduct. In deciding that issue based upon the facts presented, the Committee noted, in relevant part, as follows:

The Committee also adopted the position followed in New York that a judge is under no ethical obligation to conduct an investigation to determine how serious or minor any misconduct may be. See New York Judicial Ethics Advisory Opinions 13-118. In addition, the rules governing judicial conduct address a judge’s obligations with respect to misconduct by an attorney or judge, and there is no ethical requirement that a judge report criminal activity or other misconduct by litigants or witnesses disclosed in cases before the judge. See New York Judicial Ethics Advisory Opinions 12-180.

While a judge must act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (see Rule 1.2), as noted in JE 2015-01, there is no specific requirement for a judge to report criminal activity disclosed during cases before the judge. Likewise, there is no prohibition on a judge reporting alleged criminal activity.

Based on the facts presented, and consistent with this Committee’s opinion in JE 2015-01, the Committee unanimously determined that there is no ethical requirement for you to report alleged criminal conduct by a litigant who appeared before you, although you are not prohibited from doing so. The Committee declined to advise whether you should do so on the facts that you presented; however, if you elect to report the alleged conduct to the appropriate authority, you should do so by sending a signed transcript, as recommended in [JE 2016-08](#).

The opinions of the Committee on Judicial Ethics are advisory. Although judicial conduct that is consistent with an advisory opinion issued by the Committee may be evidence of good faith on a judge's behalf, our opinions are not binding on the Judicial Review Council, the Superior Court, the Appellate Court or the Supreme Court in the exercise of their judicial discipline responsibilities. You may submit a written request for reconsideration, explaining the basis for the request, to the Secretary to the Committee within thirty days after distribution of this opinion. Policy & Rules of the Committee, §10.

Sincerely,

Maureen D. Dennis, Chair  
Committee on Judicial Ethics