



## Connecticut Committee on Judicial Ethics

### Informal Opinion Summaries

**2020-05 (September 28, 2020)**  
**Fiduciary Positions; Family; Rules 3.8, 3.10, 3.11**

**Issues and Facts:** May a Judicial Official serve as a primary trustee (hereinafter, fiduciary) of a trust established by the Judicial Official's first cousin for the benefit of that person's surviving spouse, children, and grandchildren?

**Additional Facts:** The trust was created in Connecticut and the settlor was a resident of Connecticut. At least one of the beneficiaries of the trust resides outside of the state of Connecticut as does one other beneficiary for at least a portion of the year. All other beneficiaries are believed to reside in Connecticut. None of the beneficiaries of the trust are known to be attorneys admitted in Connecticut or in any other jurisdiction. The Judicial Official has no information that would lead him or her to believe that there exists any discord or disputes between any of the beneficiaries as regards any aspect of the trust.

**Response:** Several of the reported opinions of this Committee deal with a Judicial Official serving as a fiduciary in one way or another. Under Rule 3.8 (a) of the Code of Judicial Conduct, a judge:

may not accept appointment to serve in a fiduciary position such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

"Member of the judge's family" is defined in the Terminology section of the Code as meaning "any relative of a judge related by consanguinity within the third degree as determined by the common law, a spouse or domestic partner or an individual related to a spouse or domestic partner within the third degree as so determined, including an individual in an adoptive relationship within the third degree." "The method of computing degrees of consanguinity under the common law is to begin at the common

ancestor and move downwards, and in whatever degree the two persons are the most distant from the common ancestor, that is the degree in which they are related to each other. Thus, in computing the relationship between a judge and a first cousin, a grandparent is their common ancestor from whom they are two generations removed and, therefore, they are related in the second degree of consanguinity. The method of calculating degrees of relationship under the civil law method, on the other hand, requires that one count upward from the decedent to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts, so that brothers are related in the second degree. Under either method, the degrees of affinity are computed in the same way as the degrees of consanguinity.” 46 Am. Jur. 2d, Judges, § 113 (2020).

In Informal Opinion [JE 2012-04](#), the Committee considered whether a Judicial Official could serve as the executor or executrix of the estate of a first cousin who resides outside of the State of Connecticut. The Committee unanimously determined that the first cousin qualifies as a member of the Judicial Official’s family as defined in the Code and, consistent with Rule 3.8, that the Judicial Official may serve as a fiduciary of the estate of the first cousin subject to various conditions. Informal Opinions [JE 2012-04](#), [JE 2014-21 \(Emergency Staff Opinion\)](#), and [JE 2018-13](#) discuss the parameters of a judge serving in a fiduciary position and focus on the judge’s obligations as a fiduciary and whether such obligations may conflict with the judge’s other obligations under the Code. The items to be considered in determining whether such a conflict exists include recognition that:

1. Acceptance of the appointment and service as a fiduciary should not interfere with the proper performance of the Judicial Official’s judicial duties;
2. Pursuant to Rule 3.8(b), the Judicial Official should not accept the appointment if it is likely that he/she, in the fiduciary capacity, will be engaged in proceedings that would ordinarily come before the Judicial Official or if the estate becomes involved in an adversary proceeding in the court on which the Judicial Official serves or one under its appellate jurisdiction;
3. Pursuant to Rule 3.8(c), the Judicial Official is subject to the same restrictions on financial activities in his or her capacity as a fiduciary that apply to the Judicial Official in his or her personal capacity;
4. Pursuant to Rule 3.10, the Judicial Official should not practice law on behalf of the estate; and
5. Pursuant to Rule 3.11, the Judicial Official should refrain from financial and business dealings on behalf of the estate that tend to reflect adversely on the Judicial Official’s impartiality, interfere with the proper performance of the judicial position, or involve the Judicial Official in frequent

transactions with lawyers or persons likely to come before the court on which the Judicial Official serves.

See Informal Opinion JE 2012-04.

Because the settlor of the trust qualifies as a “member of the judge’s family” as defined in the Code, and subject to the above conditions, the Judicial Official may accept the position as a fiduciary.

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