Connecticut Committee on Judicial Ethics

Informal Opinion Summaries

2016-14 (October 20, 2016)
Attorneys; Disclosure/Disqualification; Rules 1.2, 2.4 & 2.11

Facts and Issue: A Judicial Official has had a personal friendship for many years with a non-attorney whose son was recently admitted to the bar and is working for a small firm that handles cases in the court where the Judicial Official is currently assigned. The Judicial Official has not socialized with the son's parents for approximately 5 years, but he/she still periodically keeps in touch by phone, text and the Judicial Official and parents are "friends" on Facebook. The Judicial Official and the son are not friends, nor are they "friends" on Facebook. Is the Judicial Official disqualified, or does he or she have a duty to disclose, when (1) the son or (2) a member of the law firm appears before the Judicial Official?

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 2.4 (b) states that a judge "shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment."

Rule 2.11 states that a judge "shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including, but not limited to, the following circumstances: (1) The judge has a personal bias or prejudice

concerning a party or a party's lawyer, or personal knowledge of the facts that are in dispute in the proceeding…."

Response: At issue is whether the Judicial Official's relationship with the non-attorney friend is sufficiently close to require disclosure and/or disqualification. "The obvious problem of the appearance of bias and favoritism exists when a friend or associate appears before the judge; these social relationships should not diminish the dignity of the judiciary or interfere with judicial responsibilities…. Whether disqualification is required when a friend appears as a party to a suit before a judge depends on how close the personal relationship is between the judge and the party. The standard here is… a judge must disqualify him or herself 'in any proceeding in which the judge's impartiality might reasonably be questioned.'" J.J. Alfani, et al., *Judicial Conduct and Ethics*, 4th Ed., §4.09.

In prior opinion JE 2013-20, this Committee examined the nature of a social relationship to determine whether disqualification was warranted. Based on the facts of the inquiry, including that the relationship between the Judicial Official and attorney was no longer ongoing, the Committee determined that the Judicial Official and the attorney have a minimal social relationship that does not require disqualification provided that:

1. The Judicial Official does not believe that he/she has a personal bias or prejudice (favorable or unfavorable) involving the attorney; and
2. The Judicial Official fully discloses the relationship with the attorney to the parties and their counsel for a reasonable period of time, which is not less than two years from the date of their last social contact (including any ongoing social contacts). Thereafter, if a motion to disqualify is filed, the Judicial Official should exercise his or her discretion in deciding the motion based upon the information provided in the motion and the accompanying affidavit, as provided for in Connecticut Practice Book § 1-23, as well as the particular circumstances of the case

In reaching its decision in JE 2013-20, this Committee considered New York Advisory Opinion 11-20 wherein the New York committee stated that a judge "is ordinarily in the best position to assess whether in a particular proceeding the judge's impartiality might

be reasonably questioned due to the personal relationship between the judge and the attorney… The judge should take into account factors such as the nature of the relationship, as well as the frequency and the context of the contacts." The New York committee determined that when a judge and an attorney have a minimal social relationship (such as dining together once a year and the judge's children were members of the attorney's wedding party more than five years ago), no disclosure or disqualification is necessary. However, where there is a close social relationship (i.e., monthly visits and dinners out a few times each year), disqualification is warranted.

Based on the facts presented, including that the Judicial Official and the attorney's parents have not socialized for approximately 5 years (other than via occasional phone, text or social media contact) and that the Judicial Official and the attorney/son are not friends, the Committee concluded that the Judicial Official and the parents have a minimal social relationship that does not require disqualification unless the Judicial Official believes that he/she has a personal bias or prejudice (favorable or unfavorable) involving the attorney/son. On the question of disclosure, the Committee determined that there is no duty to disclose the nature of the relationship with the attorney's parents because their last social contact was more than two years ago.

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