



Connecticut Committee on Judicial Ethics

Informal Opinion Summaries

2022-08 (November 17, 2022)

Membership; Extrajudicial activities; Disclosure/Disqualifications; Social Activities; Rules 1.2, 2.4, 2.11, 3.1 & 3.13

Issues:

The Connecticut Judges' Association (CJA) and its Judge Trial Referees (JTR) subcommittee are evaluating whether to permit retired judges, including those who now engage in the practice of law, to become members of the CJA. If membership is expanded:

- (1) What Canons and Rules of the Code of Judicial Conduct would apply to judge-members serving with former judges (practicing attorneys) on the CJA?
- (2) Is it ethically permissible to belong to an association where some members engage in the practice of law?
- (3) Is it ethically permissible to belong to an association that is open to a limited number of attorneys (only those who were former judges)?

Facts:

The inquiring Judicial Official, a judge trial referee of the Connecticut Superior Court, is currently serving as a member of the Connecticut Judges' Association (CJA) and sits on the JTR subcommittee. According to the Judicial Official, the CJA is not technically a union, but rather a corporation whose members are Connecticut state judges organized, to among other things, promote the interests of all state judges and formulate and recommend policies and procedures for the improvement of the administration of justice. Under limited circumstances, CJA members may engage in advocacy by meeting with and lobbying legislators, but for the most part, such activities would be left to Judicial Branch legislative liaisons and contracted lobbyists.

Recently, in response to expressions of interest by some retired judges, the JTR subcommittee has engaged in discussions concerning whether to permit retired judges to become members of CJA and the JTR subcommittee. The Judicial Official indicated that many of the retired judges have affiliated with law firms and are again involved in the practice of law, particularly mediation services. The Judicial Official is concerned that retired judges who become members of law firms and who socialize and fraternize with CJA members and whose firms (and the retired judges themselves, as well as their work product) come before judges in court. The Judicial Official and the JTR subcommittee seek guidance regarding what Canons and Rules of the Code of Judicial Conduct apply to judge-members who serve with former judges (practicing attorneys) on the CJA.

Relevant Code Provisions:

Rule 1.2 Promoting Confidence in the Judiciary

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) & (c) External Influences on Judicial Conduct or Judgment

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

(c) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge's judicial conduct or judgment.

Rule 2.11. Disqualification

(a) 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 facts that are in dispute in the proceeding....

Rule 3.1. Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law. However, when engaging in extrajudicial activities, a judge shall not:

- (1) participate in activities that will interfere with the proper performance of the judge's judicial duties;
- (2) participate in activities that will lead to frequent disqualification of the judge;
- (3) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;
- (4) engage in conduct that would appear to a reasonable person to be coercive; or
- (5) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use or for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Rule 3.1. Comment (1): To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

Rule 3.13. Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

- (a) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.
- (b) Unless otherwise prohibited by law, or by subsection (a), a judge may accept the following without publicly reporting such acceptance: ... (2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including

lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11; (3) ordinary social hospitality; ...

Discussion:

While this Committee cannot opine on the proposed changes to the CJA membership, it can: (1) identify the Canons and Rules of the Code of Judicial Conduct that would apply if membership on the CJA is expanded to include retired judges who engage in the practice of law; (2) provide advice concerning the ethical propriety of belonging to an association where some members engage in the practice of law; and (3) provide advice concerning the ethical propriety of belonging to an association that limits attorney-membership to former judges.

I. Ethical Concerns under the Code of Judicial Conduct

The ethical concerns that apply to this situation are no different than those applicable to judges who belong to a club, religious organization, civic organization, or bar association whose membership includes practicing attorneys. In general, the two main areas of concern facing judges in this situation include: (1) participating in social activities and (2) disclosure and disqualification. (Specific ethics inquiries from individual judicial officials would need to be evaluated on a case-by-case basis.)

(a) Social activities:

This Committee previously determined that judges may engage in social and recreational activities provided they do not detract from the dignity of the office or interfere with the performance of judicial duties. Cynthia Gray¹, in her paper entitled “A Judge’s Attendance at Social Events, Bar Association Functions, Civic and Charitable Functions and Political Gatherings”, on page 2, et seq., notes that generally judges are allowed to accept “ordinary social hospitality” and based upon that provision, a number of jurisdictions have allowed judges to attend law firm sponsored parties, including those celebrating the opening of an office, a holiday open house, a special birthday celebration, etc.

¹ Cynthia Gray is the director of the Center for Judicial Ethics at the National Center for State Courts.

The paper also notes that some jurisdictions have less permissive rules. The California Judicial Ethics Committee noted that “judges, like other members of society, must be able to extend common courtesies and social amenities to others, and be willing guests and willing hosts.” In its Advisory Opinion 43 (1994), the California Judicial Ethics Committee notes that each judge must make their own decision regarding whether attendance at a party falls within the ambit of ordinary social hospitality, but defines ordinary social hospitality as “that type of social event or other gift which is so common among people in the judge’s community that no reasonable person would believe that (1) the donor was intending to or would obtain any advantage or (2) the donee would believe that the donor intended to obtain any advantage.”

Among the factors that the California Judicial Ethics Committee directed judges to consider were:

- (1) the cost of the event in the context of community standards for similar events,
- (2) whether the benefits conferred were greater in value than traditionally furnished at similar events sponsored by bar associations or similar organizations,
- (3) whether the benefits are greater than the value of what the judge customarily provides their own guests,
- (4) whether the benefits conferred are usually only exchanged between friends and relatives,
- (5) whether there is a history or expectation of reciprocal social hospitality,
- (6) whether the event is a traditional occasion for social hospitality, such as a holiday party or the opening of an office, and
- (7) whether the benefits received need to be reported to any governmental entity.

New York opinions have stressed that ordinary social hospitality does not include a party at an expensive restaurant, a cruise, or a similar expensive, lavish affair. New York Advisory Opinion 87-15 (a).

(b) Disqualification:

The inquiring Judicial Official cites the possibility of a retired judge and their law firm appearing before a judge as a concern. Whether disqualification or disclosure is required, involves an individual analysis of the relationship between the parties and whether the judge believes he or she has any personal bias involving the retired judge.

By way of example, in [JE 2014-03](#), this Committee considered whether a judge has a duty to recuse or to disclose their relationship with a former partner or former law firm when members of a newly merged law firm appear before the judge. This Committee unanimously determined that the Judicial Official does not have a duty to automatically disqualify himself or herself when members of the newly merged large law firm appear before the Judicial Official, provided the Judicial Official does not believe that he or she has any personal bias (favorable or unfavorable) involving the new law firm. The Judicial Official does, however, have a duty to disclose their personal relationships with their former partner and the attorneys from the midsized firm. Thereafter, if a motion to disqualify is filed, the Judicial Official must exercise their 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 2014-03, this Committee took into account its prior opinions in [JE 2008-21](#) (a Judicial Official, who served as a part-time corporation counsel, need not recuse himself when former municipal employer is a party or complaining witness. Judicial Official must, however, disclose relationship for a reasonable period of time, which is not less than two years); [JE 2010-04](#) (a Judicial Official who served as an AAG approximately 15 years ago need not recuse or disclose); [JE 2010-25](#) (a Judicial Official does not have an affirmative obligation to disclose prior professional relationships that existed more than 20 years ago); and [JE 2011-06](#) (a Judicial Official, who has a close personal relationship with the current Attorney General, does not need to disqualify him/herself when a member of the Attorney General's office appears before the Judicial Official, but has a duty to disclose their personal relationship to parties and their counsel).

II. Holding Membership in Organizations that Accept Practicing Attorneys

This Committee has previously considered whether judges can hold membership in bar associations. The following are a few advisory opinions that may provide guidance.

(a) American Board of Trial Advocates (ABOTA)

In [JE 2009-17](#), the Committee considered whether a Judicial Official could join the American Board of Trial Advocates 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 in ABOTA is limited to those who have attained a certain level of jury trial experience and who are approved by the membership and board of the local chapter and the national board. (Judges only need to meet the experience criteria and be approved by the national board.)

A majority of the members on the Committee determined that a Judicial Official may join ABOTA, an organization devoted to the improvement of the law, the legal system, subject to the following conditions: (1) if a sponsoring member appears before the Judicial Official, the Judicial Official must disclose the relationship for a reasonable period of time, but not less than one year from the date on which the sponsoring member recommends the Judicial Official; (2) the Judicial Official should regularly reexamine the activities of ABOTA to determine whether it is proper for the Judicial Official to continue their relationship with it; and (3) if an issue comes before the Judicial Official for decision that involves a matter on which ABOTA has taken a public position (such as by adopting a resolution or filing an amicus curiae brief), the Judicial Official should consider whether recusal is necessary.

One member of the Committee expressed strong reservations about whether it would be prudent for a Judicial Official to accept a membership invitation to ABOTA, even if not a technical violation of the Code of Judicial Conduct. The reservations were based on ABOTA's prerequisites for membership, which effectively preclude many attorneys/judges from being invited to join, and its lobbying and advocacy.

(b) Ethnic bar association

In [JE 2012-10](#), this Committee considered whether a Judicial Official may join as a member of the Connecticut chapter of a national ethnic bar association. The Committee found that there was no indication that the association limits membership to a certain sex, age, group, or to individuals who subscribe to a particular religious belief. The Committee concluded that the Judicial Official may join as a member but should regularly reexamine the activities and rules of the association to determine whether it is proper to continue their relationship with it and should carefully consider whether the Judicial Official's identification with or involvement in specific programs or activities of the association may undermine confidence in the Judicial Official's independence, integrity, and impartiality.

(c) Connecticut Criminal Defense Lawyers Association (CCDLA)

At issue in [JE 2017-07](#) was whether a Judicial Official could belong to the Connecticut Criminal Defense Lawyers Association. The CCDLA was founded 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.

The Committee observed that although the CCDLA appeared 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.

(d) Local bar association

In [JE 2019-04](#), this Committee considered whether a Judicial Official could join a local bar association in the locality in which the Judicial Official works or lives. The Committee unanimously determined that the Judicial Official may join the local bar association as a dues paying member, but should regularly reexamine the activities and rules of the association to determine whether it is proper for the Judicial Official to continue their relationship with it and should carefully consider whether the Judicial Official's identification with or involvement in specific programs or activities of the association may undermine confidence in the Judicial Official's independence, integrity and impartiality or may result in frequent disqualification.

III. Holding Membership in Organizations that Limit Attorney-Membership to Former Judges

While Rule 3.6 of the Code prohibits judges from holding membership "in any organization that practices unlawful discrimination on the basis of sex, gender, religion,

national origin, ethnicity, physical or mental disability, or sexual orientation,” it does not appear to prohibit affiliation with an organization that limits membership based on the qualifications of its members.

Recommendation:

The Committee unanimously determined that it is ethically permissible to belong to an association that allows retired judges, including those who now engage in the practice of law, to join as members and that limits attorney-membership to former judges. If CJA membership is expanded to include retired judges, judge-members should be aware of the Code provisions set forth above and should take these rules into account when socializing with retired judges who engage in the practice of law and when these attorneys or their law firms appear before them.

[Connecticut Committee on Judicial Ethics](#)