



## **Connecticut Committee on Judicial Ethics**

### **Informal Opinion Summaries**

**2023- 06 (Emergency Staff Opinion Issued September 26, 2023)**

**Extrajudicial Activities; Appearance of Impropriety; Canons 1 & 3; Rules 1.2, 1.3, 3.1, 3.7, and 3.11**

#### **Issue**

May the Judicial Official (hereinafter, "JO") continue to serve on the board of governors as vice president and/or president of a private for-profit social and recreational club?

#### **Facts**

The JO is a decades-long member of the Club which is a social/recreational club in Connecticut. The JO currently serves as Vice President and the JO's term is set to expire in November. The JO has been asked to continue to serve as VP this coming year, commencing November 2023 and to take on the role of President in November 2024.

From the Club's website: "For over 100 years the organization has been a center for social and recreational activity for families, couples, and individual members who live and work in the area. The organization has played an important role in the culture and lifestyle of [the region] since its founding over a century ago.

"The Club was originally founded in the late 1800's to create a prestigious establishment that catered to the elite class for leisure activities [. . .] Over time, the Club has evolved into a much more inclusive private club than was originated by its founders. We have grown and changed with the times to suit the style, needs, and character of our [. . .] community members. Our responsibility is to continue to adapt with our diverse membership, while continuing to uphold our tradition of excellence. While [recreational activities are] still an important focus of the Club, activities and events have been expanded to encompass a much broader range of interests and a greater emphasis on family."

The Club's mission statement (from website): "The [. . .] Club is a place where our members and their guests feel welcome when they arrive, their expectations are met or exceeded while they are here and they feel appreciated when they leave."

The Club's website states that "[b]ecoming a part of the [. . .] Club community is simple! [The] Membership Director is happy to help you understand the application process and timeline of becoming a member. Board policy states prospective members must obtain three recommendation letters from current members of the Club as part of the application process."

The JO states that the board of governors do not receive any kind of salary, bonus, wages, or reimbursement of any expenses of any kind. However, the board members are served monthly dinners that they do not have to pay for (each dinner is valued at approximately \$20-40). The JO spends about 1-2 hours per month undertaking responsibilities as vice president; the JO predicts that, as president, 1-2 hours per week will be given to Club responsibilities.

Additionally, JO will not be rendering any legal advice [,] will not be fundraising, and the club is not litigious, nor does it discriminate in its membership.

The Club has been involved in two Connecticut Superior Court lawsuits between 2009 and 2010. In both instances, the lawsuits were withdrawn.

**Relevant Code Provisions:** Canons 1 & 3; Rules 1.2, 1.3, 3.1, 3.7, and 3.11

Canon 1. A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Canon 3. A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

Rule 1.2 of the Code of Judicial Conduct (Promoting Confidence in the Judiciary) states that a judge "should 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 (Extrajudicial Activities in General) provides that subject to certain conditions a judge "may engage in extrajudicial activities except as prohibited by law." When engaging in extrajudicial activities, a judge shall not participate in activities that (1) will interfere with the proper performance of judicial duties, (2) will lead to frequent disqualification, (3) would appear to a reasonable person to undermine the judge's independence, integrity or impartiality, or (4) engage in conduct that would appear to a reasonable person to be coercive.

Rule 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities) states that: (a) [ . . . ] a judge may participate in activities sponsored [ . . . ] by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit including, but not limited to the following activities: . . . (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.

Rule 3.11 (Financial, Business, or Remunerative Activities) states: "(a) A judge may hold and manage investments of the judge and members of the judge's family. (b) A judge shall not serve

as an officer, director, manager, general partner or advisor of any business entity except for: (1) a business closely held by the judge or members of the judge's family; or (2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family. (c) A judge shall not engage in financial activities permitted under subsections (a) and (b) if they will: (1) interfere with the proper performance of judicial duties; (2) lead to frequent disqualification of the judge; (3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or (4) result in violation of other provisions of this Code.

## Discussion

Rule 3.7 is controlling here. The rule states, in part, “a judge may participate in activities sponsored [. . .] by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit” (emphasis added). Given the Club’s own description and mission statement, the club may be called a fraternal organization. However, the Club is not a nonprofit fraternal organization. Therefore, the club does not fit within the strictures of allowable organizations under Rule 3.7. Moreover, Rule 3.7(a)(6), which allows the JO to, under certain conditions, “serv[e] as an officer, director, trustee, or nonlegal advisor of such an organization or entity”, is of no consequence since the Club is not a nonprofit organization.

Assuming, though, that the first part of Rule 3.7(a) is satisfied, the remainder of Rule 3.7 is not satisfied. Rule 3.7(a)(3) states that a JO “may participate in [. . .] the following activities [. . .] (3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity but only if the organization or entity is concerned with the law, the legal system, or the administration of justice.” Either as vice president or president, to the extent that the JO has a direct hand in soliciting membership or overseeing the parts of the Club that solicit membership, the Club is not held out to be an organization that is concerned with the law, the legal system, or the administration of justice.

Rule 3.11 also does not allow for the JO to serve as vice president or president of the Club. Rule 3.11 states, in part, “A judge shall not serve as an officer, director, manager, general partner or advisor of any business entity”. The rule goes on to list exceptions to this prohibition (e.g., closely held business), none of which apply here.

Since the JO’s role as vice president or president of the Club may reasonably be determined to conflict with Rules 3.7 and 3.11, Rule 1.2 must be considered. Rule 1.2 states, in relevant part, that a judge “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.” Actual impropriety aside, Rule 1.2 demands that there not even be an appearance of impropriety. Stated differently, the JO cannot reasonably suggest that they are violating the Code of Judicial Conduct. The rule states that it is inappropriate for a JO to do something that “would create in reasonable minds a perception that the judge violated this Code.” Since it is reasonable to determine that the JO would violate Rules 3.7 and 3.11 by accepting the role of vice president or president of the board of governors for the Club, the “reasonable minds” referred to in Rule 1.2 may also determine that Rules 3.7 and 3.11 are violated, and so it follows that Rule 1.2 is then violated.

This opinion is consistent with past decisions of the Connecticut Judicial Ethics Committee (hereinafter, JEC). [JE 2014-18](#) involved a JO acting as vice president, and then president, of a private, not-for-profit country club. The JEC unanimously determined that the country club is a civic or fraternal organization and not a business entity, and that the JO may serve as an officer and member of the board of directors of a country club, however the JEC imposed several conditions. The JEC, in part, relied on the fact that the club was not-for-profit.

[JE 2015-22](#) involved a JO serving on the Board of Directors of a Connecticut nonprofit 501(c)(3) institution. The JEC determined that the JO may serve on the board. Again, the JEC relied on the fact that the institution was non-profit: “Based upon the facts presented, including that the board is part of a public, non-profit, educational institution [. . .].”

This opinion is also consistent with New York’s ethics decisions. [Opinion 16-161](#) concerned a JO’s position on an admissions committee of a country club. The opinion was issued under the assumption that the club was not-for-profit. The opinion stated that the JO was allowed to “serve on the admissions committee of his/her country club, assuming the club is non-profit [. . .].”

Similarly, New York [Opinion 06-141](#) endorsed language from an earlier ethics decision stating that: “[a] judge [is] precluded from alternative employment as an employee or independent contractor for any profit-making entity, such as a gas station, landscaper, security company, beach club [. . .].”

## **Recommendation**

Based on the facts presented, including that the Club is not a non-profit organization, it is the JEC’s opinion that service on the board of governors as either vice president or president violates Rules 1.2, 3.7, and 3.11. The JEC advises the JO that they should not continue to serve as vice president or accept the president position.

[Connecticut Committee on Judicial Ethics](#)