



Connecticut Committee on Judicial Ethics

Informal Opinion Summaries

2024-01 (April 18, 2024)

Promoting Confidence in the Judiciary; Prestige of Office; Disclosure/Disqualification; Extrajudicial Activities; Business Activities; Compensation and Reporting; Rules 1.2, 1.3, 2.11, 3.1, 3.11, 3.12 & 3.15.

Issue: May a Judicial Official (the “JO”) sell the JO’s paintings on an occasional basis - for profit or for the cost of supplies - to friends, family, and the general public?

Facts: For the past several years, the JO has occasionally created and sold paintings to friends and family. Sales to the general public have also occurred but are rare. The JO has indicated that the activity is a hobby and not a full business enterprise. No formal business entity, such as a limited liability company or a corporation, is used. There are no other employees or partners besides the JO.

In terms of frequency, the JO estimates sales of about 10 paintings per year. Any sales of paintings may be commissioned pieces and/or already completed paintings. Sales are made under the JO’s own name rather than a pseudonym. No sales are made from a commercial website or art gallery.

The JO currently maintains an Instagram social media account that displays some of the paintings. Occasionally, sales have been made to the public through inquiries to the JO on Instagram. The Instagram account is currently private and closed to the public. The account describes the paintings as “Watercolor Portraits. Landscapes. Botanicals.” None of the biographical information indicates the position or title of the JO.

The JO also has indicated they maintain a personal, private Facebook account where the JO sometimes shares the JO’s paintings. The JO’s Facebook ‘friends’ are all people the JO knows personally. The Facebook account is also linked to the Instagram account.

The JO is cognizant of the recusal rules for individuals that may purchase artwork and then appear before the court. In addition, none of the past sales to the general public have been made within the State of Connecticut. Most of the income earned from sales goes back into purchasing art supplies; however, on occasion a profit may be earned on the paintings.

Relevant Code of Judicial Conduct 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 1.3. Avoiding Abuse of the Prestige of Judicial Office

A judge shall not use or attempt to use the prestige of judicial office to advance the personal or economic interests of the judge or others or allow others to do so.

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 ...

(b) A judge shall keep informed about the judge's personal and fiduciary economic interests.

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 3.11. Financial, Business, or Remunerative Activities

(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.

Rule 3.12. Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

Rule 3.15. Reporting Requirements

(a) A judge shall publicly report the amount or value of:

(1) compensation received for extrajudicial activities as permitted by Rule 3.12; ...

Applicable Judicial Ethics Decisions:

In the past, the Committee has addressed whether JOs can be compensated for their extrajudicial activities. For example, under [JE 2014-11](#), the Committee concluded that a JO could serve as the editor of a legal treatise for which the JO would receive compensation. Two conditions of note included: (a) any compensation of the JO must be reasonable and commensurate with the work performed pursuant to Rule 3.12; and (b) the JO must not make use of court premises, staff, stationery, equipment or other resources under Rule 3.1. See [JE 2014-11](#).

The issue of whether a JO may sell and receive compensation for artwork created by a JO is an inquiry of first impression for the Committee. There are a number of opinions from other jurisdictions that do address the sale of artistic works by a JO. The following is a summary of the relevant opinions from outside Connecticut:

New Mexico: In [Judicial Advisory Opinion 13-09](#), a New Mexico state judge inquired about the proposed display and sale of the judge's pottery at a charitable benefit for a non-profit law school. The judge would be identified as an artist and law school alumnae, but not as a state judge. The New Mexico Advisory Committee on the Code of Judicial Conduct concluded that the judge could accept reasonable compensation for the pottery with a recommendation that safeguards be used to avoid the judge learning the identity of a purchaser.

New York: In [NY Joint Opinion 09-192 and 09-231](#), the New York State Advisory Committee on Judicial Ethics (the "NY Committee") considered, in relevant part, whether a judge

could permit an art gallery to sell the judge's artwork on commission. The NY Committee concluded that the proposed activity was permissible under the New York Rules Governing Judicial Conduct. Note that this joint opinion modifies [NY Opinion 09-08](#) to the extent that it prohibits a judge from offering photographs for sale to the general public in all circumstances.

Wisconsin: In [Opinion 97-1R](#), the Wisconsin Judicial Conduct Advisory Committee (the "WI Committee") determined that a judge's sale of his photographic artwork for profit at a public ethnic festival did not violate the Wisconsin Rules of Judicial Conduct. The WI Committee noted that the judge had signed his prints under a pseudonym and did not plan to use his last name or his judicial title. The WI Committee further reasoned that the activity did not impact normal working hours, and, while commercial in nature, the activity was artistic and did not demean the judicial office.

Massachusetts: Under [CJE Opinion No. 2001-18](#), the Massachusetts Committee on Judicial Ethics (the "MA Committee") evaluated a judge's request as to the exhibition and sale of fine art paintings at two art galleries. The MA Committee stated that the judge could continue to accept compensation for the sale of an occasional painting so long as: (a) the activity was consistent with previous informal advice on the matter (i.e., the judge could not identify themselves as a judge in any materials containing a description of the artist; and the identity of any purchasers must be withheld from the judge); and (b) the judge was not conducting a "business" as an artist.

Discussion: A review of the Connecticut Code of Judicial Conduct (as well as the examples provided by other jurisdictions) indicates that the JO's painting activity is permissible, subject to some additional considerations.

First, the scope and nature of the undertaking – categorized by the JO as a hobby with the sale of an estimated ten paintings per year – is not indicative of any activity that would lessen public confidence in the judiciary under Rule 1.2 ("Promoting Confidence in the Judiciary"). This position is bolstered by the fact that the type of paintings created (portraits, landscapes, and botanicals) do not reflect subjects that could demean the judiciary if subject to public scrutiny. Comment (2) to Rule 1.2.

The information presented by the JO also does not clearly indicate any violation of Rule 1.3 ("Avoiding Abuse of the Prestige of Judicial Office"). Under this rule, a JO cannot attempt to use the prestige of judicial office to advance their personal or economic interests. In this case, the JO's Instagram account – which on rare occasion is the source of requests for paintings from the general public – does not mention the JO's office or title. Lastly, there is no indication that the JO uses a third party to promote sales – such as an art gallery or auction house – that could potentially exploit the JO's judicial office and violate Rule 1.3.

If the JO's sales activity is allowed, it may be appropriate for the JO to continue to produce paintings under the JO's own name rather than a pseudonym. In Wisconsin [Opinion 97-1R](#), the judge used a pseudonym on his signed photographic prints and a business name for the festival booth. However, the present matter and the Wisconsin opinion should be distinguished. The sales activity in the Wisconsin opinion was aimed at the general public while the sales activity in the present matter is largely supported by friends and family who already know the JO. The use

of a pseudonym by the Wisconsin judge was a suitable way to avoid purchasers knowing the identity of the judge - and causing a potential recusal issue.

However, under the present matter, the JO's friends and family – the main audience for the sales of the paintings – clearly know the JO's identity; the use of a pseudonym would likely not be helpful. In addition, any "friends and family" purchasers of the JO's art who appeared before the JO would likely require a recusal for potential "personal" bias under Rule 2.11, regardless of any past art transactions.

Consideration must also be given under the Code as to whether the JO's activity simply represents a general extrajudicial activity under Rule 3.1 (e.g., a hobby) or a business that must also adhere to the specific conditions under Rule 3.11 (Financial, Business, Remunerative Activity). The JO's activity does not, at first glance, indicate any of the normal characteristics of a full business enterprise such as a formal business name, the formation of a business entity, or the hiring of employees. None of the more traditional formats of "for-profit" art sales (such as an art gallery or commercial website) are used either. Despite this, the fact that income is generated from the sale of the paintings - occasionally at a profit - still presents some indication of business activity.

However, even if the sale of the paintings is deemed to fall within the purview of a "business activity" under Rule 3.11, the facts do not indicate any violation of that rule. As opposed to some other jurisdictions, Connecticut clearly permits a JO to serve as an officer, director, manager, general partner or advisor of a closely held business. Rule 3.11(b). The JO's sole involvement in the activity - without employees – also maintains compliance with Rule 3.11.

Recommendation:

Based on the facts presented, the Committee concluded that the JO may sell the JO's paintings on an occasional basis - for profit or for the cost of supplies - to friends, family, and the general public, subject to the following:

1. The JO must maintain compliance with the provisions of Rule 3.11 regarding a JO's "Financial, Business, or Remunerative Activities". See Rule 1.1; Rule 3.2.
2. As a holder of judicial office, the JO's court duties must take precedence over the JO's business activity. See Rule 2.1 and Comment (1) to Rule 2.1.
3. If the JO's business activity interferes with their judicial duties, including, but not limited to, frequent recusals and/or extended periods of time being devoted to the JO's personal business and not the JO's judicial duties, the JO should divest themselves of the business/financial interests. See Rule 3.1; Rule 3.11 and Comment (2) to Rule 3.11.
4. The JO must disqualify themselves from any proceeding in which the JO knows that the JO has an economic interest that could be affected by the proceeding. See Rule 1.3; Rule 2.11.

5. The JO's activity should not make use of court premises, staff, stationery, equipment or other resources (including, without limitation, any court-issued phone, computer, or e-mail address) except for incidental use or as provided in Rule 3.1(5).

6. The JO can only accept reasonable compensation for the sale of any painting in compliance with Rule 3.12. Any income generated by the JO's activity will need to maintain compliance with the reporting requirements under Rule 3.15.

[Connecticut Committee on Judicial Ethics](#)