

Testimony of Clarence J. Jones
Judge, Superior Court
President of the Connecticut Judges Association
March 26, 2009

Regarding Proposed Legislation
Raised Bill No. 6340
An Act Concerning Judicial Branch Openness

Good morning Senator McDonald, Representative Lawlor, Senator Kissel, Representative O'Neill and Honorable Members of the Judiciary Committee.

My name is Clarence J. Jones. I am a judge of the Superior Court in Connecticut and have the pleasure to serve as the President of the Connecticut Judges Association which consists of 252 members, including judges, senior judges and judge trial referees.

The matters that I am here to address are contained in Raised Bill No. 6340 - AN ACT CONCERNING JUDICIAL BRANCH OPENNESS.

Section 1 Rule-making

We remind the Legislative Branch that rule making of the Judicial Branch implicates the Separation of Powers Doctrine, and suggest caution in this area.

Sections 2 through 4 - Judicial Selection Commission

With respect to the provisions applicable to the Judicial Selection Commission, contained in Sections 2 through 4:

We support the provisions which would require state judge referees to be approved by the Judicial Selection Commission, with the provision that they have the same presumption of qualification as other judges.

We are opposed to the provision in subsection (I) of Section 5 which would require that the total affirmative and negative votes of the members of the Judicial Selection Commission be made publicly available, as we feel that would have a chilling effect on the members of the Bar who sit on that commission, and might discourage them, as well as many lay people from agreeing to serve.

Section 5 - Judicial Review Council

We are opposed to subsection (h) of Section 5 which prohibits the Judicial Review Council from considering “any ethics advisory opinion issued by the Judicial Branch or any committee thereof or inquire as to whether the judge or family support magistrate sought or received any ethics advisory opinion.”

Establishment of Committee on Judicial Ethics

As you are aware, as stated in the Annual Report of the Committee, the Judicial Branch has established a Committee on Judicial Ethics, which began operations on August 1, 2008, after Chief Justice Chase T. Rogers adopted the Policy and Rules of the Committee and appointed the the following members: Hon. Barry R. Schaller, Chair; Hon. Linda K. Lager, Vice Chair; Hon. Robert J. Devlin; Hon. Socrates H. Mihalakos, and Professor Jeffrey A. Meyer, members. The Chief Justice also designated Attorney Martin R. Libbin as Secretary to the Committee, and Attorney Viviana L. Livesay as Assistant Secretary.

I am providing the Judiciary Committee with a copy of the Annual Report of the Committee on Judicial Ethics, as well as the Informal Opinion Summaries - all of which are on the Judicial Branch website. A review of the Annual Report and the summaries demonstrates the importance of judges having access to the Committee for review and reflection as they respond to challenging ethical situations. It is clear beyond question that the judges' use of this valuable resource should not be discouraged nor disregarded if questioned by the Judicial Review Council.

Committee on Judicial Ethics
Annual Report for August 1 – December 31, 2008

Membership. The Committee on Judicial Ethics began operation on August 1, 2008, after Hon. Chase T. Rogers, Chief Justice, adopted the Policy and Rules of the Committee and appointed the following members to the Committee: Hon. Barry R. Schaller, Chair; Hon. Linda K. Lager, Vice Chair; Hon. Robert J. Devlin, Hon. Socrates H. Mihalakos, and Professor Jeffrey A. Meyer, members. The Chief Justice also designated Attorney Martin R. Libbin as Secretary to the Committee, and Attorney Viviana L. Livesay as Assistant Secretary.

Policy and Rules. Although Committee members have, from time to time, received individual requests for "informal opinions" about ethics matters, the Committee decided that members would not offer ethics advice on an individual basis but, rather, would refer judicial officials to the Committee through the standard procedure, which involves a telephone request to the Secretary. The rationale was that individual responses, which would occur without the benefit of full research and collaborative decision making, might be misinterpreted to be Committee responses.

On September 17, 2008, pursuant to sections 2b and 3c of the Policy and Rules, the Committee approved procedures that enable the Committee to respond to a request when the inquiring judicial official needs an answer in a shorter time period than would allow for the required notice of a public meeting. Any opinions rendered pursuant to these Emergency Opinion Procedures, which are posted on the Committee webpage, will be included in the log of requests and responses maintained by the Secretary and posted on the webpage. On September 10, 2008, the Committee had approved the framework of the expedited procedure subject to review and approval of the final language with the understanding that if needed, the framework could be followed until the actual language was approved. In early September of 2008, the Committee notified all Judicial Officials of the new procedure as well as instructions for submitting requests.

Webpage and Other Means of Publicizing the Committee. The Committee's webpage became fully accessible on October 20, 2008, at the following address: <http://jud.ct.gov/Committees/ethics/>. The webpage, which appears on the Judicial Internet website and which can be accessed by means of a link on the Judicial Intranet, contains all vital information about the Committee including the Policy and Rules, instructions for submitting a request for an opinion, Code of Judicial Conduct, all agendas and minutes for Committee meetings plus a log of all opinions. On October 22, 2008, the Chair made a presentation to a meeting of the Connecticut Judges Association, in which he explained the basic procedure of the Committee. The presentation was followed by a question and answer session.

Although all opinions are explained and captioned by subject matter in the log of Informal Opinion Summaries, which is posted on the Committee Webpage, (a copy of which is attached) the Committee intends to prepare a subject matter index for easy

access to opinions, with search functionality. In addition, the Committee intends to prepare and post a section entitled Frequently Asked Questions as a guide to Judicial Officials. The Education Committee asked the Committee to present a plenary program on judicial ethics at the 2009 Connecticut Judges Institute. The Chair and Vice Chair are currently working with the CJI on this program.

Activity. The first request for an informal opinion was received in early August and the Committee issued its first opinion on August 5, 2008. From August 1, 2008 through the end of 2008, the Committee received twenty-seven requests for informal opinions. (Two successive opinions were rendered with regard to one inquiry, which was later modified.) During that period, twenty-five opinions were issued, and one was declined as not within the jurisdiction of the Committee. One request, which was submitted on December 30, 2008, was responded to on January 2, 2009. In addition to the foregoing, one inquiry was not pursued by the judicial official after being advised that the inquiry concerned a policy decision rather than an ethical decision. No requests for formal opinions were submitted during 2008.

Most requests for opinions have involved off-the-bench activities. Although many requests involve multiple subjects, the principal issue in twenty of the requests pertained to activities or conduct off the bench. Of these, six involved recommendations or letters of reference, four involved charitable activities or contributions, three involved social activities, and three involved employment before and after judicial service. The remaining request concerned educational activities, government service and media comments. The majority of requests involving on-the-bench conduct pertained to disqualification. Many of the off-the-bench activity requests also raised disqualification issues.

Recommendations. The Committee has no recommendations to present at this time.

Conclusion. The Committee is dedicated to providing accurate, timely, and effective ethics opinions for the guidance of Judicial Officials. Because the full meeting procedure, involving notice of telephone conference meetings, has worked effectively to address all inquiries in a timely fashion, the Committee has not yet had to rely on its Emergency Opinion Procedure. The Committee is prepared to do so when the occasion arises.

January 16, 2009

Respectfully submitted,

Barry R. Schaller
Chair
Committee on Judicial Ethics

Attachment

**Connecticut Committee on Judicial Ethics
Informal Opinion Summaries**

2008-01 (August 5, 2008)

Recommendations; Court Employees; Canon 3B & C.G.S. § 51-39a

Issue: May a Judicial Official provide a referral/recommendation to an existing court employee who is applying for another Judicial Branch position?

Response: Based upon the facts presented, the Committee unanimously agreed that the Judicial Official may write a letter of recommendation provided that the Judicial Official has personal knowledge of the person recommended and that the person recommended is not a relative of the Judicial Official within the meaning of Canon 3B or C.G.S. § 51-39a.

2008-02 (September 2, 2008)

Disqualification; Canon 3

Issue: Is a Judicial Official disqualified from presiding over a criminal case in which the defendant previously was before the Judicial Official in a juvenile matter either as a delinquent or parent in a child protection matter?

Response: In the absence of more specific facts, the Committee unanimously agreed that whether a Judicial Official is disqualified is governed by the following general rules: (1) a mere change of assignment or court location does not require recusal, (2) judges are routinely required to screen-out information that is inadmissible, (3) if, however, the judge believes his or her fairness is impaired by the prior knowledge, recusal is required, (4) the test for disqualification is an objective one, whether a reasonable person knowing all of the circumstances might reasonably question the judge's impartiality (see *Papa v. New Haven Federation of Teachers*, 186 Conn. 725 (1982)), and (5) Canon 3 (c) (1)(A) should be reviewed. If facts arise for which further guidance is sought, the Judicial Official should feel free to come back to the Committee for an opinion based on case-specific facts.

2008-03 (September 10, 2008)

Recommendations; Court Employees; Canon 3B & C.G.S. § 51-39a

Issue: May a Judicial Official complete a letter of reference form for a former legal research/law clerk applying for a position with the Attorney General's Office?

Response: Based upon the facts presented, the Committee unanimously agreed that the Judicial Official could complete a letter of reference form for a former legal research/law clerk applying for a position with the Attorney General's

Office provided that the Judicial Official has personal knowledge of the person recommended and the person recommended is not a relative of the Judicial Official within the meaning of Canon 3B or C.G.S. § 51-39a.

2008-04 (September 17, 2008)

Gifts; Social Activities; Canons 2 & 5

Issue: May a Judicial Official attend a sold-out baseball game with an attorney friend using tickets obtained by the attorney's law firm and in circumstances where the Judicial Official will pay for his/her ticket and where the firm (but not the attorney) has previously had cases and is expected to have future cases before the Judicial Official?

Response: Based upon the facts presented, including that the attorney friend does not appear before the Judicial Official, that other members of the firm will not be present with the attorney and Judicial Official at the game, and that there are not frequent transactions between the firm and the Judicial Official, the Committee unanimously agreed that the Judicial Official could attend the game if the Judicial Official purchased the ticket at the higher of the face-value or what the firm paid for the ticket.

2008-05 (September 17, 2008)

Charitable Activities; Event, attendance/appearance; Family; Financial Disclosure; Gifts; Canons 2, 5 & 7

Issue: May a Judicial Official be a guest of the Judicial Official's spouse's client at an expensive charity event?

Response: Based upon the facts presented, the Committee unanimously agreed that the Code did not prohibit a Judicial Official and his/her spouse being guests of the spouse's client at a charity event that costs \$1,000 per-person provided that neither the client nor his businesses have matters before the court and the gift is reported in the same manner as compensation in accordance with Canon 5(c)(4)(C). The Committee noted that if a political candidate is a speaker at this nonpolitical event, it would raise questions under Canon 2 (a). The Committee believed that this was a close issue but that attendance by the Judicial Official, even if a political candidate was speaking at the event, would not violate the Code. It was noted that even if it was a political event, the Judicial Official's spouse could accept the gift.

2008-06 (September 26, 2008)

Fundraising; Soliciting Contributions; Social Activities; Law School Activities; Prestige of Office; Canons 2 & 5

Issue: May a Judicial Official serve on a law school reunion committee?

Response: Based upon the facts presented, the Committee unanimously agreed that the Judicial Official could join the law school reunion committee provided that he/she did not participate in any activity involving fundraising from others, including but not limited to (1) not allowing his/her name to be used on any letters or communications concerning fundraising activities, and (2) not participating in activities related to requesting participation in a class gift campaign, thanking classmates who have made a gift or pledge, and contacting those that have not yet given to encourage their support.

2008-07 (September 26, 2008)

Fundraising; Soliciting Contributions; Charitable Activities; Gifts; Family; Canons 2 & 5

Issue: May a Judicial Official's spouse raise funds to enable the Judicial Official to qualify for participation in a charitable golf tournament?

Response: Based upon the facts presented, the Committee unanimously agreed that the Judicial Official's spouse could not solicit charitable donations that would be used to make-up a portion of the Judicial Official's minimum fundraising contribution to enable the Judicial Official to qualify for participation in a charity golf tournament. Although the facts did not reveal how it was contemplated that the Judicial Official's spouse would solicit such donations, the Committee determined that it would be improper for the spouse to (1) solicit funds without disclosing to donors that the purpose was to enable the Judicial Official to participate, (2) act as the Judicial Official's agent in soliciting funds for the charity, or (3) solicit a "gift" for the Judicial Official.

2008-08 (October 1, 2008)

Post-retirement Employment; Advancing Private Interests; Disqualification; Canons 3 & 5

Issue: May a Judicial Official, in preparing for post-retirement employment, communicate with law firms regarding future employment opportunities?

Response: Based upon the facts presented, the Committee unanimously agreed that the Judicial Official should not make it generally known that he/she is seeking a position, so as to avoid being solicited by a number of law firms or other entities that may appear before the Judicial Official prior to his/her leaving the Judicial Branch. With respect to initiating contact with law firms, the Judicial Official may do so on an individual basis; however, the Judicial Official should not contact any law firm currently before the Judicial Official or that was recently before the Judicial Official. Furthermore, because of the requirement in Canon 3 that judicial duties take precedence over all other matters, he/she must be selective in the firms that he/she contacts, so that the Judicial Official does not have to recuse him/herself from so many cases as to interfere with the proper performance of his/her judicial duties.

2008-09 (October 1, 2008)

Charitable Activities; Gifts; Family; Financial Disclosure; Event, attendance/appearance; Canons 2 & 5

Issue: May a Judicial Official and his/her spouse attend a charity award program as guests of an attorney?

Response: Based upon the facts presented, the Committee unanimously agreed that the Judicial Official may accept two tickets to a charity reception and dinner provided that the value (\$325) is reported pursuant to Canon 5 (c) (4) (C) and that neither the donor lawyer nor the donor lawyer's law firm has interests that have come or are likely to come before the Judicial Official.

2008-10 (October 1, 2008)

Recommendations; Family; Canon 2, 3 & 4

Issue: May a Judicial Official respond to a request from the Judicial Selection Commission requesting a letter of reference for a relative being considered for approval?

Response: Based upon the facts presented, the Committee unanimously agreed that the Judicial Official, in response to a request from the Judicial Selection Commission, should decline to write a letter of recommendation for a relative who is being considered for a judgeship, because to do so would be to "knowingly advocate or knowingly participate in the appointment . . . of a relative in or to a position in the judicial branch" in violation of Canon 3 (b) (5).

2008-11 (October 10, 2008)

Advisory Opinions - Jurisdiction

Policy and Rules of Committee, Paragraph 6

The Committee received a request and determined that, in accordance with paragraph 6 of its rules (requiring the subject matter of a request not be the subject of a matter "pending before a court, agency or commission"), it lacked jurisdiction to issue an opinion.

2008-12 (October 10, 2008)

Financial Activities; Stock Interest; Disqualification; Remittal; Canons 3 & 5

Issue: Does the ownership of a small amount of stock in a bank require a Judicial Official to disqualify himself or herself from presiding over all foreclosure cases involving that bank?

Response: Based upon the facts presented, the Committee unanimously agreed that a Judicial Official's ownership of a small amount of stock in a bank that frequently appeared before the Judicial Official, unless held in a non-judge managed mutual fund, required the Judicial Official to disqualify himself or

herself, subject to possible remittal in accordance with Canon 3(d). The Judicial Official was advised to consider whether divestment was feasible in the near future prior to considering whether to request a judicial re-assignment.

2008-13 (October 30, 2008)

Family Support Magistrate Referee; Compliance with Code

Issue: Does the Code of Judicial Conduct apply to a Family Support Magistrate Referee?

Response: The Committee unanimously agreed that a Family Support Magistrate Referee should comply with the Code of Judicial Conduct to the same extent that the Code applies to a Senior Judge or Judge Trial Referee.

2008-14 (October 30, 2008)

Educational Activities; Gifts; Advertisement; Event, attendance/appearance; Canons 2, 3, 4, & 6

Issue: May a Judicial Official participate as a panel member at a law-related educational seminar where attendees may ask questions of the panel members? If yes, may the Judicial Official (1) accept an honorarium of \$10-per-participant with a guaranteed minimum payment of \$50 and (2) allow the sponsor of the seminar to use the Judicial Official's photo and biographical information in advertising materials for the seminar?

Response: Based upon the facts presented, the Committee unanimously agreed that a Judicial Official may participate in a law-related educational program where questions may be asked by the audience provided that the Judicial Official (1) does not comment on a pending or impending matter, (2) does not cast doubt on his/her capacity to decide impartially any issue that may come before him or her, (3) does not offer advice as to how lawyers should handle specific matters, and (4) exercises caution as to questions that may seek to elicit such specific advice. With respect to compensation for participating in the seminar, the Committee unanimously agreed that a Judicial Official should either decline any honorarium or accept only the minimum honorarium of \$50. A Judicial Official should not accept an honorarium based upon the number of persons attending the program or tickets for staff to attend the program. Whether or not an honorarium is accepted, a Judicial Official may accept reimbursement of expenses for travel to the program. Finally, with respect to advertising the Judicial Official's participation in the educational program, the Committee unanimously agreed that the Judicial Official should retain the right to review and pre-approve the use of any biographical information or photograph to ensure that the information is presented in a tasteful and dignified manner. It was noted that control over the use of such information by the Judicial Official is needed to ensure that Canon 2 (b)'s prohibition against lending the prestige of judicial office to advance the private interests of others is not violated.

2008-15 (November 6, 2008)
Recommendations; Canon 2

Issue: May a Judicial Official who has personal knowledge of a law school graduate who is a candidate for admission to the bar of another state provide a letter of reference in the context of an adversarial character and fitness proceeding stemming from concern that the candidate cheated on a college exam?

Response: Because the character and fitness proceeding involved in this ethics request is adversarial in nature and not the type ordinarily conducted for all bar applicants, the Committee unanimously agreed in accordance with Canon 2(b) and its commentary that the Judicial Official should not write a reference letter for this bar candidate unless specifically requested to do so by the bar authorities.

2008-16 (November 20, 2008)
Social Activities; Appearance of Impropriety; Event, attendance/appearance; Canons 2 & 5

Issue: May a Judicial Official attend a small family law firm's five-hour holiday party on board a river boat cruise ship?

Response: Based upon the facts presented, including that (1) the holiday party was by invitation only, (2) invitations were issued only to small family law firms, their guests and select Judicial Officials, (3) the party was sponsored/coordinated by family law attorneys with active court appearances, (4) it was likely that those attending the party would have cases pending before the invited Judicial Officials, and (5) the party was aboard a cruise ship and, therefore, if a Judicial Official believed that the nature of the event became compromising (i.e., created an appearance of impropriety), it would not be possible to leave, the Committee unanimously determined that attendance was not permitted.

2008-17 (November 26, 2008)
Recommendations; Canons 2 & 3

Issue: May a Judicial Official respond to a request from an individual for a recommendation of an attorney to represent a person in a specific legal matter?

Response: Based upon the facts presented, the Committee unanimously agreed that a Judicial Official may recommend an attorney to an individual provided that the individual given the recommendation has a sufficiently close relationship to the Judicial Official that the Judicial Official would automatically recuse himself or herself from a case involving that person independent of whether the Judicial Official provides a recommendation. If a Judicial Official

provides a recommendation, he/she should recommend multiple names of counsel.

2008-18 (November 26, 2008)

Financial Activities; Financial Disclosure; Canons 2, 3, & 5

Issue: May a Judicial Official financially contribute to a legal aid society that has attorneys who may appear before the Judicial Official?

Response: Based upon the facts presented, the Committee unanimously agreed that contributions to a legal aid organization are permissible in accordance with Canon 5(b) and that disclosure of such contributions generally is not required unless the amount of the contribution is such that the Judicial Official's impartiality might reasonably be questioned under Canon 3.

2008-19 (December 10, 2008)

New Judge; Transition to Bench; Former Law Firm; Compensation; Canons 2, 3(c) & 5(c); Rule 1.5(e) of the Rules of Professional Conduct

Issue: May a Judicial Official accept payment from the Judicial Official's former law firm (1) for work done on contingency fee lawsuits that were pending at the time the Judicial Official was appointed to the bench, or (2) for cases initiated for clients that the Judicial Official brought to the firm prior to the Judicial Official's appointment to the bench?

Response: Based upon the facts presented, which involved a single payment to be made for a case the Judicial Official worked on and which was approved by his/her former law firm and the client, the Committee unanimously agreed that it is ethically permissible for the Judicial Official to accept payment provided the amount to be paid reasonably reflects the work the Judicial Official performed on the case. The Judicial Official should also consider whether the decision to accept payment may affect the Judicial Official's qualification to hear matters involving the client, opposing parties and the law firm.

2008-19A (December 18, 2008)

New Judge; Transition to Bench; Former Law Firm; Compensation; Canons 2, 3(c) & 5(c); Rule 1.5(e) of the Rules of Professional Conduct

Issue: May a Judicial Official accept payment from a former law firm for a case initiated on behalf of a client that the Judicial Official had brought to the firm as a "rainmaker" and for whom the Judicial Official had provided nominal legal services, where the fee arrangement was made in lieu of any payments for his/her interest in the practice?

Response: The facts presented included, inter alia, that (1) there was a verbal separation agreement that specified the percentage of fees that the Judicial Official would receive from the total legal fees the firm received for cases initiated

on behalf of clients the Judicial Official brought to the firm prior to the Judicial Official's departure, and (2) the client was aware of the fee arrangement and approved the payment to the Judicial Official. The Committee unanimously approved the Judicial Official's receipt of payment when the sole remaining case is finally settled, although that will occur approximately four years later than the firm and Judicial Official had contemplated when the separation agreement was entered. The Committee noted that while the verbal pre-existing separation agreement was acceptable, it was preferable for such agreements involving Judicial Officials to be in writing. The Committee also noted that the Judicial Official should consider whether the decision to accept payment may affect the Judicial Official's qualification to hear matters involving the client, opposing parties and the law firm.

2008-20 (December 10, 2008)
Off the Bench Conduct; Media; Canon 3

Issue: May a Judicial Official, either individually or on behalf of a group of Judicial Officials, initiate communications with the media concerning another Judicial Official's years of service, that Judicial Officials are entitled to a presumption of innocence the same as everyone else, and that a case involving a Judicial Official should be decided in court based upon the evidence presented?

Response: Based upon the facts presented, the Committee unanimously decided that the proposed comments were not appropriate and would violate Canon 3(a)(6). It was noted that there was an absolute prohibition on initiating such comments and that qualifying the comments by noting that they were the personal opinion of the Judicial Official would not obviate the ethical prohibition.

2008-21 (December 10, 2008)
Disqualification; Canon 3

Issue: Must a Judicial Official, who prior to appointment as a Judicial Official served as a part-time corporation counsel, recuse himself or herself from civil or criminal cases in which the former municipal employer is a party or the complaining witness, such as the arresting agency or the complaining party in a criminal housing matter?

Response: Based upon the facts presented, the Committee unanimously decided that provided the case is not one that was handled by the corporation counsel's office at the time the Judicial Official served as corporation counsel or otherwise involves a matter about which the Judicial Official acquired personal knowledge of disputed evidentiary facts due to prior service as corporation counsel, and the Judicial Official does not believe that he or she has any personal bias (favorable or unfavorable) involving the municipality or its counsel, the Judicial Official need not recuse himself or herself. The Judicial Official must;

however, for a reasonable period of time, which is not less than two years, provide notice of the prior employment relationship in such cases.

2008-22 (December 10, 2008)
Off the Bench Conduct; Canons 2 & 3

Issue: May a Judicial Official notify a federal judge who is hearing a parallel case of the Judicial Official's ruling in the state court matter?

Response: Based upon the facts presented, the Committee unanimously decided that the Judicial Official should not directly contact the federal Judicial Official to bring to his or her attention the decision in the state court matter; however, the Judicial Official may suggest to the parties that they do so.

2008-23 (December 10, 2008)
Educational Activities; Canons 2 & 4

Issue: May a Judicial Official serve as the judge for a mock trial conducted as part of a training program for contract attorneys regarding direct and cross-examination, given that the training program is only open to attorneys that represent a single class of clients (i.e. plaintiffs or defendants)?

Response: Based upon the facts presented, the Committee unanimously decided that the Judicial Official could participate subject to the following conditions: (1) the Judicial Official had already decided not to accept questions from those attending the program, in order to limit his or her rulings to the hypothetical facts in the mock trial and to avoid commenting on a pending or impending matter, (2) the Judicial Official must be willing and available to participate in training for attorneys representing the other side in litigation, (3) the Judicial Official should not provide guidance on the "in-and-outs" of practice before the Judicial Official's court, (4) the Judicial Official should not suggest a particular interpretation of a disputed legal issue, (5) the Judicial Official should not provide direct assistance in a particular case, (6) the Judicial Official should avoid the appearance of bias or favoritism in the content of the presentation, (7) the Judicial Official may not provide legal advice, and (8) the Judicial Official may not comment on pending or impending cases.

2008-24 (December 18, 2008)
Governmental Commissions; Canons 2, 3 & 5

Issue: May a Judicial Official serve as a member of a team appointed by one municipality to meet with a team appointed by a second municipality and a private mediator in an attempt to resolve a dispute between the municipalities?

Response: Based upon the facts provided, including that there is related pending federal litigation and it is foreseeable that there will be additional

litigation if the mediation is unsuccessful, the Committee unanimously agreed that the Judicial Official was prohibited from serving on such a team by virtue of the prohibition in Canon 5 (g) barring a Judicial Official from accepting appointments to a governmental committee, commission or position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. The Committee also was concerned with potential violations of Canon 2's prohibition on lending the prestige of judicial office to advance the private interests of others, Canon 3(a)(6)'s prohibition on public comments about a pending or impending proceeding in any court, and Canon 5(f)'s prohibition on the practice of law.

2008-25 (December 18, 2008)

Off the Bench Conduct; Media; Canons 2, 3 & 4

Issue: May a Judicial Official participate on a "Law Talk" segment of a local radio station program devoted to the Judicial Branch's foreclosure mediation program?

Response: Based upon the facts presented, including that the request involves a single appearance for an educational program related to the law, the program will be hosted by a private attorney and also include a foreclosure mediator who is employed by the Judicial Branch, and that members of the public will be able to call-in to the show and ask questions, the Committee unanimously approved the Judicial Official's participation subject to the following conditions: (1) the appearance does not interfere with the Judicial Official's judicial duties, (2) the Judicial Official does not give opinions which would cast doubt on the Judicial Official's impartiality, (3) the Judicial Official is careful not to express opinions or to present the topic in any way that would indicate that the Judicial Official has a predisposition with respect to particular cases, (4) the Judicial Official's presentation is factual and instructive about the procedures and parameters of the subject matter but does not include comments about any pending matters, and (5) the Judicial Official retains the right to review and pre-approve the use of any biographical information about the Judicial Official used to advertise the segment in order to avoid a violation of Canon 2(b)'s prohibition against lending the prestige of judicial office to advance the private interests of others.

2008-26 (January 2, 2009)

Recommendations; Canons & 3; C.G.S. § 51-39a

Issue: May a Judicial Official provide a recommendation to a court employee, about whom the Judicial Official has personal knowledge, who is seeking a position with the Judicial Branch in the judicial district where the Judicial Official is currently assigned?

Response: Based upon the facts presented, including that the employee does not currently work in the Judicial Official's judicial district, the court employee is

not a relative of the Judicial Official within the meaning of Canon 3B or C.G.S. § 51-39a, and the Judicial Official is not an administrative judge, assistant administrative judge or presiding judge, and for the reasons cited in Opinion 2008-1, the Committee unanimously agreed that the Judicial Official may provide a letter of recommendation specific to the position being applied for. The letter may be on Judicial Branch stationery or personal stationery, on which the Judicial Official identifies his or her title. The letter should indicate that the recommendation represents the personal opinion of the Judicial Official.

2009-01 (January 21, 2009)

Off the Bench Conduct; Media; Canons 2, 3 & 4

Issue: May a Judicial Official be interviewed on camera concerning the impact of broadcasting court proceedings of the Judicial Branch, the possible future role of television coverage of the courts, and related issues?

Response: Based upon the facts provided, including that the video is being produced by a public television network as part of its anniversary commemoration of the founding of the network, and that the video will not be used in advocacy, fundraising or any other activity from which the network may derive benefits, the Committee unanimously agreed that the Judicial Official may participate subject to the following restrictions: (1) the appearance does not interfere with the Judicial Official's judicial duties, (2) the Judicial Official does not give opinions that would cast doubt on the Judicial Official's impartiality, (3) the Judicial Official is careful not to express any predisposition with respect to any particular case, (4) the presentation is factual and instructive, i.e., it explains the procedures used for televising court proceedings, but does not contain comments about pending or impending cases, and (5) the Judicial Official retains the right to review and pre-approve the use of any biographical information concerning the Judicial Official used to advertise the segment, in order to avoid a violation of Canon 2 (b)'s prohibition against lending the prestige of judicial office to advance the private interests of others. In discussing the matter it was noted that Canon 4 (1) specifically states that a Judicial Official "may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice" so long as the Judicial Official acts in the proper performance of judicial duties and does not cast doubt on his or her capacity to impartially decide any issue that may come before the Judicial Official. The Committee wished to emphasize that Judicial Officials retain the right to express personal opinions provided that they comply with these provisions as well as others set forth in the Code.

2009-02 (January 27, 2009)

Off the Bench Conduct; Charitable Activities; Gifts; Family; Event, attendance/appearance; Canons 2, 3, 5 & 7

Issue: May a Judicial Official attend a fundraising charity dinner at which a relative will be presented with an award for the relative's years of public service?

Response: The information provided concerning this request indicates the following facts: the Judicial Official contemplates attending a fundraising charity dinner hosted by a nonprofit organization to honor the Judicial Official's relative, the Judicial Official will not be a speaker or a guest of honor, the funds raised will go towards various charities, the nonprofit organization does not engage in political activity or contribute to any political party or candidates, the nonprofit has no connection with a political party except its founding membership, the organization has recognized or given awards to individuals from the other major political party, the organization is neither a party to nor has stated a public position on the merits or resolution of any matter pending before the Judicial Official, and the award recipient is not presently before and is not likely to come before the Judicial Official. The Committee unanimously agreed that the Judicial Official may attend the event subject to the following restrictions: (1) the Judicial Official may accept a ticket to the event from his or her relative pursuant to Canon 5 (c) (4) (B) unless the honoree is not a "relative" as that term is defined in Canon 3 (b) (5), in which case the Judicial Official must report the gift pursuant to Canon 5 (c) (4) (C) if the value of the ticket exceeds \$100; and (2) the Judicial Official shall not act in a manner that would cause doubt as to his or her impartiality.

2009-03 (January 30, 2008)

Attorney Conflict; Disqualification; Advisory Opinions- Jurisdiction; Reporting Misconduct; Canons 1, 2 & 3; Policy and Rules of Committee, Paragraphs 5 & 6

Issues:

- (1) May a Judicial Official inquire of an attorney concerning the attorney's potential involvement in drafting a complaint against the Judicial Official?
- (2) Does a Judicial Official have a duty to recuse himself or herself in matters in which the same attorney appears before the Judicial Official?
- (3) Does a Judicial Official have an obligation to report alleged misconduct involving the attorney to appropriate disciplinary authorities?

Response: Based upon the facts presented, the Committee unanimously decided the issues as follows. While the issue of whether a Judicial Official can inquire of an attorney about his or her involvement in drafting a complaint is not an issue that is currently pending before a court, agency or commission, in accordance with paragraph 5 of the Committee's Rules, the Committee declines to answer this inquiry, which involves non-ethical as well as ethical concerns, beyond noting that the use of judicial office to question an attorney in order to investigate the source of a complaint would be in violation of Canons 1, 2 and 3.

The Judicial Official has correctly decided to recuse him or herself from hearing matters in which the attorney appears during the pendency of the complaint. Following the disposition of the complaint, the Judicial Official should be guided by Canon 3(c)(3), which provides that a judge is not automatically disqualified from sitting on a proceeding merely because a lawyer to the proceeding has filed a lawsuit against the judge or filed a complaint with the judicial review council. In such instances, the judge is required to disclose on the record that fact to the lawyers and parties to the proceeding before the judge. In addition, the Judicial Official should be guided by the principle enunciated in *Consiglio v. Consiglio*, 48 Conn. App. 654 (1998) that “[t]he matter of a judge’s recusal is in the reasonable discretion of that judge.... The decision to recuse oneself is an intrinsic part of the independence of a judge.” *Id.* at 561-562. Finally, with respect to whether the Judicial Official has a duty to refer the attorney to a disciplinary authority for alleged misconduct during a proceeding, Canon 3(b)(3) and its Commentary note that, although a judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge becomes aware, the judge has discretion to report the matter depending upon the seriousness of the conduct and the circumstances involved. The Judicial Official should be guided by these provisions in exercising his or her own discretion as to whether to report the attorney’s conduct.

2009-04 (January 27, 2009)

Gifts; Canons 2, 3 & 5

Issue: May a Judicial Official and the Judicial Official’s family accept an invitation to spend several days with another couple, with whom they are close personal friends, both of whom are lawyers, at the friends’ vacation home?

Response: Based upon the facts presented, the Committee unanimously agreed that two families vacationing together at one of the family’s homes, in view of the fact that the families regularly socialize together, is part of ordinary social hospitality and should be permitted subject to the following conditions: (1) the Judicial Official continues to recuse him or herself when either of the friends or the business that employs the friend who serves as house counsel appear before the Judicial Official, (2) such recusals are infrequent and do not interfere with the orderly processing of the court’s business, and (3) the Judicial Official and his or her family staying with their friends at the friends’ vacation home is consistent with the social hospitality that the Judicial Official and his or her family have extended to their friends.

2009-05 (January 27, 2009)

Recommendations; Canons 2 & 3B; C.G.S. § 51-39a

Issue: May a Judicial Official provide a letter of support for an attorney who has been nominated to receive a professional service award from a private organization?

Response: Based upon the facts presented, the Committee unanimously approved the request subject to the following conditions: (1) the Judicial Official has personal knowledge of the candidate's qualifications that are relevant to the particular award, (2) the candidate is not, as noted in the inquiry, a relative within the meaning of the Code or C.G.S. § 51-39a, (3) the Judicial Official indicates that the opinions expressed represent the personal opinions of the Judicial Official, (4) neither the nominated attorney nor members of his or her law firm or the organization giving the award have an appearance before the Judicial Official at the time the recommendation is provided or for a reasonable period, under the circumstances, before or after the submission of the letter of support, and (5) if the Judicial Official believes that recusal would be required in order to comply with condition (4) because his or her fairness would be impaired, and that recusal is likely to be frequent, the Judicial Official should not provide the letter of support.

**2009-06 (Emergency Staff Opinion issued January 28, 2009)
Political Activity; Canon 7**

Issue: May a Judicial Official attend a public event at which a friend of the Judicial Official plans to announce his or her candidacy for political office?

Emergency Staff Opinion: The Judicial Official was advised that attendance at the event is prohibited by Canon 7.

**2009-07 (February 5, 2009)
Political Activity; Canon 7**

Issue: May a Judicial Official attend a political gathering/fundraiser at which a member of the Judicial Official's family residing in the Judicial Official's household (as that term is defined in the Code of Judicial Conduct) is to receive an award?

Response: The Committee unanimously decided that Canon 7 of the Code of Judicial Conduct prohibits attendance at any portion of the political gathering.

**2009-08 (February 13, 2009)
Recommendations; Disqualification; Canons 2 & 3; C.G.S. § 51-39a**

Issue: May a Judicial Official serve as a reference for a person applying for a position as a police officer with one or more municipal police departments?

Response: Based upon the facts presented, the Committee unanimously approved the request subject to the following conditions: (1) the Judicial Official has personal knowledge of the candidate that is relevant to the position for which the candidate is applying; (2) the candidate is not a relative within the meaning of the Code or C.G.S. § 51-39a; (3) the Judicial Official indicates that the opinions

expressed represent the personal opinions of the Judicial Official; (4) neither the police department nor the decision makers (the hiring authority) have cases pending as named parties before the Judicial Official nor are they likely to have any cases pending for a reasonable period of time after the submission of the letter of recommendation; (5) if the Judicial Official believes that recusal would be required in order to comply with condition (4) because his or her fairness would be impaired, and that recusal is likely to be frequent, the Judicial Official should not provide the letter of recommendation; and (6) if the candidate is successful in securing employment with the police department, the Judicial Official should be alert to considering the possibility of recusal in accordance with Canon 3(c)(1) in future cases in which the Judicial Official knows the candidate is involved.

2009-09 (February 18, 2009)

**Event, attendance/appearance; Civic Activities; Fundraising;
Canons 2, 4 & 5**

Issue: May a Judicial Official be a guest speaker at a breakfast hosted and paid for by a legal aid organization when the specified purpose of the event is to thank those who have already financially supported the organization during its annual giving campaign?

Response: Based upon the facts presented, including that the participants are limited to lawyer donors, some of whom have appeared in the past and are likely to continue to appear before the judicial official and that, although no additional requests for contributions will be made at the event, the specified purpose of the event is to thank the donors who have already financially supported the organization during its annual giving campaign, a majority of the Committee's members (three) determined that the breakfast served a fundraising purpose and therefore was a fundraising activity or event within the meaning of Canon 5(b)(2). The majority believed that the breakfast constituted the final event of the fundraising campaign and that the Judicial Official's public participation was tantamount to endorsing the donors' contributions and encouraging them to contribute in the future. The majority concluded that because the event is a fundraiser within the meaning of the Code, serving as a speaker at the event would violate Canon 5(b)(2). The majority determined that this inquiry should be governed by Canon 5(b), which specifically references legal aid organizations in its commentary to subsection (b)(1), rather than Canon 4. The majority was also concerned that serving as a speaker at this event could be perceived as a violation of Canon 2(b) although it may not be a technical violation of that provision. The majority concluded, however, that the Judicial Official could attend the breakfast but should not serve as a speaker.

The majority considered advisory opinions from other jurisdictions, including Alabama, Indiana, Maryland and New York, as well as by this Committee's informal opinion JE 2008-06 which advised a judicial official not to participate in fundraising for a law school reunion, thank classmates who had made gifts to the reunion fund or encourage future support.

Two members did not believe that, on the facts presented, the breakfast constituted a public fundraising activity or fund raising event in violation of Canon 5(b)(2) and instead determined that the controlling requirement is the general proviso of Canon 5(b) that “[a] judge may participate in civic and charitable activities that do not reflect adversely upon the judge’s impartiality or interfere with the performance of his or her judicial duties.” The minority considered advisory opinions from Indiana, Maryland and Michigan. The minority believed that, even if the breakfast qualifies as a “fund raising event,” Canon 5(b)(2) does not apply because the judicial official is not “an officer, director, trustee, or non-legal advisor” of the organization. The minority further concluded that the event was not a “fund raising event” within the meaning of Canon 5(b)(2), because no funds are to be collected or requested at the breakfast event, and the judicial official does not intend to speak on a matter related to fund raising. The minority also noted Canon 4(1) which encourages judges to “speak, write, lecture, teach and participate in other activities concerning the law, the legal system, and the administration of justice.”