Committee on Judicial Ethics
Teleconference
Wednesday, October 7, 2009

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Linda K. Lager, Vice Chair, Judge Robert J. Devlin, Jr., Judge Socrates H. Mihalakos and Associate Professor Jeffrey A. Meyer. Staff present: Martin R. Libbin, Secretary, Viviana L. Livesay, Esq., Assistant Secretary (after start of meeting).

MINUTES

I. With all members present, Justice Schaller called the meeting to order at 9:16 a.m. Although publicly noticed, no members of the public attended.

II. The Committee unanimously approved the draft Minutes of the September 16, 2009 meeting.

III. The Committee considered Judicial Ethics Informal Opinion 2009-32 concerning whether a Judicial Official could be recognized by an advocacy organization at its annual convention as one of the 100 most influential community leaders in Connecticut. Based upon the information provided, including the fact that the nonprofit organization acknowledges that the event is a fundraiser and that it engages in litigation, advocacy and political action, the Committee unanimously determined that it is impermissible under Canon 5 (b) for the Judicial Official to be honored at the fundraising event.

IV. The Committee considered Judicial Ethics Informal Opinion 2009-34 concerning whether a Judicial Official may serve as a judge for a mock trial conducted as part of an education program consisting of a psychologist, psychiatrists, residents/students in child psychiatry and a couple of attorneys. A Judicial Official has been asked to serve as a judge for a mock trial conducted as part of a seminar in Forensic Psychiatry where over the course of a month the students take turns testifying. The requesting psychologist is the only one of the group who provides services in the Judicial Official's courthouse. That doctor is on the approved list of court appointed evaluators and may have occasion to testify before the Judicial Official. The mock trial will involve examinations of two expert witnesses in the context of a custody dispute. The Judicial Official was advised that the group would like feedback from the Judicial Official regarding what a judge wants to know from an expert witness and "testifying techniques". The Judicial Official does not know the names of any of the psychiatrists or interns who will be in attendance. Two attorneys, who do not practice before the Judicial Official, will participate. The mock trial is not open to the general public.

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Based on the specific information provided, the Committee members determined that it was ethically permissible in accordance with Canon 4(1) for the Judicial Official to participate in the mock trial educational program, subject to the following conditions:

(1) The Judicial Official should be generally willing to participate in appropriate educational exercises for other groups of court appointed evaluators or expert witnesses, if requested and available.

(2) The Judicial Official should limit his or her rulings and discussion to the hypothetical facts in the mock trial example and should not accept questions beyond the scope of those matters from those attending the program. In addition, the Judicial Official should not comment on a pending or impending matter in the courts.

(3) The Judicial Official should not provide legal advice or give training on "testifying techniques" (such as training regarding a witness's tone of voice, hesitation or readiness to answer, the look of the witness, the witness' carriage, gestures, zeal, expressions, use of eyes, shrugs, pitch of voice, air of candor, etc.), but may comment on proper courtroom attire and the processes and procedures followed in the courtroom.

(4) The Judicial Official should not suggest a particular interpretation of a disputed legal issue or give opinions that would cast doubt on the Judicial Official's impartiality or indicate that the Judicial Official has a predisposition with respect to a particular case or with the resolution of any particular issue.

(5) The Judicial Official should avoid any appearance of bias or favoritism concerning the content of the presentation, the presenters or the participants in the continuing education program.

(6) The Judicial Official should ensure that his/her participation does not interfere with the proper performance of the Judicial Official's official duties or create grounds upon which the Judicial Official may have to recuse him/herself.

V. The meeting adjourned at 9:44 a.m.

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